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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CM-11781-CII-2022 in/and

FAO-1613-2014 (O&M)

Date of Decision: 20th December, 2022

Reliance General Insurance Company Ltd.

.. Appellant

Vs.

Krishna and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

Mr. Sushil Bhardwaj, Advocate
for respondents No.1 to 5.

...

Manoj Bajaj, J. (Oral)

FAO-1613-2014 (O&M) and

XOBJC-175-CII-2014

Appellant-Insurance company has filed this appeal to challenge the award dated 29.07.2013 passed in MACT No.39/2013 by the Motor Accidents Claims Tribunal, Sonipat, whereby the claim petition filed by claimants (respondents No.1 to 5) was allowed qua claimants No.1 to 3 only and compensation of Rs. 19,20,680/- under Section 166 Motor Vehicles Act, 1988 has been awarded to them, towards death of Sunil Kumar in a vehicular accident.

Briefly, the facts of the case are that a claim petition under Section 166 Motor Vehicles Act, 1988 for grant of compensation of rupees thirty five lacs for loss of life of Sunil Kumar (deceased) in a vehicular accident was filed by claimants No.1 to 5 being his parents and sisters

against respondents-Sandeep s/o Jagbir Singh, Sandeep s/o Krishan Singh, and Reliance General Insurance Company Limited, driver, owner and insurer respectively of the truck bearing No.HR-46C-1790. As per pleadings, on 18.07.2011, Sunil Kumar alongwith Naveen was coming from village Farmana to Sonipat on a motor cycle bearing registration No.HR-10P-7115 and his uncle Deepak Kumar was following them on his motor cycle. The two wheeler was being driven by Sunil Kumar at a moderate speed with Naveen was a pillion rider, and at about 10.00 p.m. when they reached in between the area of villages Machhri and Karewari, the truck bearing registration No.HR-46C-1790, being driven by respondent No.1 in a rash and negligent manner came from opposite side and struck against their motor cycle. As a result, they both fell down and sustained injuries on various parts of their bodies, who were admitted to General Hospital, Sonipat, where Sunil Kumar was declared dead. The accident was caused because of rash and negligent driving of the offending vehicle by respondent No.1, and in this regard, a case FIR No.67 dated 19.07.2011, under Sections 279, 337 and 304-A IPC at Police Station Mohana was registered at the instance of Deepak Kumar against the driver Sandeep s/o Jagbir Singh. On this cause of action, the claimants brought the petition to seek compensation of Rs.35 lacs against the driver, owner and insurer of the offending truck.

Upon notice, the petition was contested by respondents No.1 and 2, driver and owner by filing joint written statement, wherein they took the stand that no accident was caused due to rash and negligent driving of the offending vehicle by respondent no.1, rather the said accident took place due to sole rash and negligent driving on the part of the victim himself,

who was driving the motorcycle bearing registration No.HR-10P-7115. Further, it was pleaded that claimants have involved the offending vehicle to extract compensation, but as the vehicle is insured by respondent No.3, therefore, they are not liable to pay compensation.

The claim was also contested by respondent No.3-Insurance company by filing its separate written statement, wherein the alleged accident was denied, and it was pleaded that the claimants in connivance with police have filed this claim petition to extract compensation. As per pleadings, the offending vehicle was being plied in violation of the terms and conditions of the insurance policy and while denying other averments, in the end, it was prayed that the claim petition be dismissed.

The Motor Accident Claims Tribunal after considering the pleadings, framed three issues, and thereafter, the parties were allowed to adduce their respective evidence. Upon considering the pleadings and evidence on record, the Tribunal vide award dated 29.07.2013, allowed the claim petition and awarded compensation of Rs.19,20,680/- to claimants (respondents No.1 to 3). Hence, this appeal.

In response to the notice of motion issued by this Court on 26.03.2014, the respondents (claimants) appeared and also filed their cross-objections seeking enhancement of the compensation, and vide order dated 26.09.2014, this Court ordered that the cross-objection be heard along with the main appeal.

Learned counsel for the appellant (Insurance Company) has argued that the involvement of the offending vehicle is seriously doubtful, as the FIR relating to accident registered on the next day does not contain its particulars, as it was stated by Deepak Kumar, complainant that the accident

was caused by an unknown vehicle. He submits that the complainant of the FIR had taken the victim to the hospital, but the record of the post mortem report shows that the dead body was brought by Constable Wazir Singh and it was identified by one Jaskaran Singh. He further submits that the trial in the criminal case ended in acquittal of respondent No.1-driver of the truck through judgment dated 06.09.2013, therefore, the findings on issue No.1 holding him negligent are not sustainable. In support of his argument, Mr. Kodan, learned counsel for the appellant has relied upon the decision rendered by Hon'ble the Supreme Court in “**Surender Kumar Arora and Anr. Vs. Dr. Manoj Bisla and Ors., 2012 AIR (Supreme Court) 1918**”. Learned counsel for the appellant has not raised any other argument, much less relating to the quantum of compensation assessed by the Motor Accident Claims Tribunal, Sonipat.

On the other hand, learned counsel for the claimants has argued that the findings on issue No.1 relating to the negligence of the truck driver returned by the Motor Accident Claims Tribunal, Sonipat are based upon proper appreciation of the evidence, including the deposition of eye-witness, namely, Naveen. He submits that merely because the dead body was identified by somebody else would not be enough to disbelieve the other evidence, which proves the involvement of the offending vehicle in the accident.

Learned counsel for claimants has further argued that the Motor Accident Claims Tribunal has not properly appreciated the evidence and principles while assessing the compensation, as the victim was only 23 years old with a government job, but it has applied the multiplier of 13 and the same deserves to be increased in view of the decision passed by Hon'ble

Supreme Court in “National Insurance Company Limited Vs. Pranay Sethi and others (2017) 16 SCC 680” He submits that even future prospects of the victim were not considered while awarding compensation of Rs.19,20,680/-, which is on lower side, therefore, the cross-objections be allowed and compensation be enhanced.

Learned counsel for the appellant-Insurance company opposes the cross-objections and submits that the compensation awarded by the Tribunal is fair and adequate.

Learned counsel for the parties have been heard and with their assistance, I have perused the case file carefully.

The appellant-Insurance company has pressed this appeal against the impugned award dated 29.07.2013 on the sole ground that the insured truck bearing registration No.HR-46C-1790 was not involved in the alleged accident dated 18.07.2011 as alleged by the claimants, and in this regard, the reliance is placed upon the judgment of acquittal dated 06.09.2013, whereby Judicial Magistrate 1st Class, Sonipat acquitted respondent No.1-Sandeep s/o Jagbir Singh, in case FIR No.67 of 2011, registered under Sections 279, 337 and 304-A IPC, at Police Station Mohana, Sonipat, but upon analyzing the evidence on record, this Court does not find any merit in this argument. According to the claimants, the driver of the motorcycle, namely, Sunil Kumar (deceased) was accompanied by pillion rider, namely, Naveen (PW-3) when the alleged accident took place and apart from him, uncle of the deceased, namely, Deepak Kumar (PW-2) was also following him on his motorcycle and these witnesses have deposed before the Tribunal to prove the accident caused by the offending vehicle driven by respondent No.1.

During the course of hearing, learned counsel for the appellant has produced the copy of the judgment of acquittal dated 06.09.2013 and a perusal of the same reveals that the trial Court proceeded to acquit the accused by extending him benefit of doubt, as the material witnesses were not examined by prosecution. Though the photographs of the place of occurrence were produced in evidence as Ex. P-1 to P-4 and the offending vehicle was also taken in possession by police during investigation, but for lack of examination of important witnesses, the prosecution failed to discharge onus beyond the shadow of reasonable doubt.

Notably, the driver and owner of the offending vehicle in their joint written statement pleaded that the truck driver was not negligent and the accident was caused because of the negligence of the motorcycle driver, therefore, the Tribunal while considering the depositions of PW-3 Naveen and PW-2 Deepak Kumar rightly proceeded to hold the involvement of insured vehicle in the alleged accident. Thus, this Court has no hesitation in holding that the findings returned by the Tribunal on issue No.1 do not call for any interference as the same are based upon proper appreciation of evidence. The decision relied upon by Mr. Kodan, learned counsel for the appellant is not helpful to the case of the appellant, as the same is not applicable in the present case because the claimants have successfully discharged the onus on issue No.1. Resultantly, no case is made out for interference with the appeal filed by the insurance company.

Now, while examining the cross-objections preferred by the claimants seeking enhancement of the compensation, this Court finds that though the Id. Tribunal noticed the decision of the Hon'ble Supreme Court rendered in “**Sarla Verma and others Vs. Delhi Transport Corporation**

and another, 2009 (3) RCR (Civil) 77 (Supreme Court).”, but failed to examine the nature of the job of the victim and did not assess the compensation by including the component of future prospects of the victim. The claimants had adduced documentary evidence relating to the income of the deceased by producing salary slip (Ex.P-2) proved by (PW-4) Constable Amit No.1292 DAP Ist Battalion, Delhi and according to it, victim Sunil Kumar aged 23 years was permanently employed as a Constable, therefore, in view of the guidelines laid down in **Sarla Verma's case**, the compensation was to be assessed while taking into account the future prospects of the victim. The deceased was unmarried and the claim petition was allowed only in respect of claimants-parents and unmarried sister (Suman), whereas qua the other married sisters, it was held that they are not entitled to seek any compensation.

Thus, this Court is of the considered opinion that addition of 50% towards future prospects would serve the ends of justice and the deduction to the extent of 1/3rd therefrom towards personal expenses of the victim is also justified.

Resultantly, the compensation is calculated as below:

Heads	Amount
Monthly Income	Rs.18,420/-
Future Prospects @ 50%	Rs.9,210/-
Total monthly income	Rs.27,630/-
Annual Income	Rs.3,31,560/-
Deductions @ 1/3 rd	Rs.1,10,520/-
Annual Dependency	Rs.2,21,040/-
Multiplier @ 15/loss of dependency	Rs.33,15,600/-

Rs.19,15,680/-, therefore, over and above this, the claimants shall be entitled to receive a sum of Rs.13,99,920/- as enhanced compensation, besides Rs.5000/- as funeral expenses granted by the Tribunal.

In view of the above discussion, the appeal by insurance company being devoid of any merit is hereby dismissed, and the cross-objections filed by claimants are accepted and the total compensation of Rs.19,20,680/- awarded by the Motor Accident Claims Tribunal, Sonipat is enhanced to Rs.33,20,600/- (Thirty three lacs twenty thousand and six hundred). The apportionment of the compensation and the rate of interest as directed by the Tribunal shall be applicable to the enhanced compensation.

20th December, 2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No