IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of decision: 14.09.2022
FAO-2687-2016(O&M)

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD.
....Appellant

Versus

ASHA RANI AND ORS.
...Respondents

FAO-952-2016 (O&M)

ASHA RANI AND ORS
....Appellants

Versus

SANJAY KUMAR AND ORS
...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present : Mr. Ravinder Arora and Mr. Neeraj Khanna, Advocates
for the appellant in FAO-2687-2016 and
for respondent No.3 in FAO-952-2016.

Mr. Gaurav Aggarwal, Advocate
for the claimants/appellants in FAO-952-2016 and
for respondent Nos.1 to 3 in FAO-2687-2016.

Ms. Shaveta Sanghi, Advocate
for respondent No.4 in FAO-2687-2016 and
for respondent No.1 in FAO-952-2016.

Mr. C.S. Jattana, Advocate
for respondent No.2 in FAO-952-2016 and
for respondent No.5 in FAO-2687-2016.

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MANJARI NEHRU KAUL. J. (ORAL)

This common order shall dispose of the above-mentioned two appeals as they both arise out of same Award dated 29.07.2015.

The Insurance Company as well as the claimants are in appeal before this Court to impugn the award passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'Tribunal') wherein the following compensation was awarded to the claimants on account of death of Pawan Kumar (hereinafter referred to as 'deceased'), who died in a motor accident vehicular accident on 19.03.2013.

Sr. No.	Heads of claim	Awarded by Tribunal	Total
1.	Income	8,000/-	
2.	Add % of income	NIL	As no permanent job.
3.	Deduction	1/3rd	
4.	Multiplier by 12 (annual income)	64,000/-	
5.	Multiplier	14	8,96,000/-
6.	Loss of consortium	25,000/-	25,000/-
7.	Loss of love and affection	20,000/-	20,000/-
8.	Loss of estate	15,000/-	15,000/-
9.	Funeral expenses	10,000/-	10,000/-
		Total	Rs.9,66,000/-

It was ordered that the compensation was to be paid by respondent No.3-Insurance Company.

The deceased was stated to be riding his motorcycle bearing No. HR-24-Q-2453 and going from Fatehabad to Sirsa when the offending vehicle i.e. Car bearing registration No. DL-6-CC-6362 came in a rash and negligent manner driven by respondent No.1 (in FAO-952-2016) and collided with the motorcycle of the deceased, leading to his death. An FIR No.58 dated 19.03.2013 under Sections 279, 304-A, 427 IPC was registered against the respondent.

Learned counsel appearing for the appellant-Insurance Company vehemently argued that the Tribunal failed to take into consideration that the Insurance policy Ex.R1 of the offending vehicle was in fact a fake policy shrouded in suspicious circumstances, as it had been obtained just a day prior to the accident in question. He submitted that Sanjay Kumar-respondent No.1, while stepping into the witness-box as RW-1 also stated that the Insurance policy could have been verified from the customer care of the Insurance Company only after one week from the date of its issuance, which fact was corroborated by the owner of the offending vehicle-respondent No.1, who too deposed that it had been verified after one week of its issuance. He submitted that it was thus evident that a fraud had been played upon the Insurance Company.

Learned counsel for the Insurance Company further argued that the Tribunal also ignored that the Insurance Company had sent a letter to Sanjay Kumar-respondent No.1 on 13.05.2013 vide which he had been intimated that no premium had been received in respect of the Insurance policy and hence the cover note of the policy had been cancelled *ab initio* . It was still further argued that compensation awarded by the Tribunal was exorbitant and thus required to be re-assessed and scaled down more so, as no cogent evidence had been led by the claimants qua the income of the deceased.

Learned counsel appearing for the appellant-claimants vehemently disputed and opposed the prayer and submissions made by the counsel opposite and submitted that the compensation awarded by the Tribunal in fact was on the lower side and not in consonance with the settled ratio of law as laid down in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270; Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** *and* ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333.***

Learned counsel for the claimants further submitted that the claimants, who were the widow and two children of the deceased, had not been adequately compensated for loss of consortium including parental consortium. Not only this, no compensation had been awarded to them with respect to future prospects, which in the case in hand should have been to extent of 25% since the deceased was 45 years of age.

Learned counsel appearing for respondent No.1/owner and driver has vehemently opposed the submissions made by the counsel for the Insurance Company by urging that enough cogent evidence had been led before the Tribunal that the Insurance policy of the offending vehicle was valid with effect from 18.03.2013 to 17.03.2014 and hence it left no manner of doubt that the offending vehicle was insured with the Insurance Company on the date of accident in question. It was submitted that merely because the Insurance policy had been renewed a day or two prior to the accident in question would not in any manner lead to an inference that a forged and fabricated insurance policy had been procured by the owner/driver.

I have heard learned counsel for the parties and perused the relevant material on record.

The contentions of the learned counsel for the Insurance Company qua the insurance policy Ex.R-1 of the offending vehicle being a fake and fabricated document does not carry any force and hence this Court has no hesitation in rejecting the same. Though it was vehemently argued that the policy was fake, however, strangely neither was any criminal complaint lodged by the Insurance Company nor any cogent evidence led to prove the same. The Insurance Company has also moved an application under Order 41 Rule 27 CPC i.e. CM-9905-CII-2016 for placing on record the letter dated 13.05.2013 vide which the Insurance Policy was cancelled. The said letter was issued on 13.05.2013, however, the accident took place on 19.03.2013, therefore, the cancellation of

Insurance policy would be of no consequence. Further, the letter dated 13.05.2013 was well within the knowledge and possession of the Insurance Company even at the time when the proceedings before the Tribunal were underway. However, they failed to produce it in their evidence for reasons best known to them, therefore, this Court does not find any reason to allow the application for additional evidence and the same is dismissed.

This Court also does not find any merit in the submissions made by the learned counsel for the Insurance Company that the compensation awarded by the Tribunal was exorbitant and on the higher side. Rather, this Court concurs with the submissions made learned counsel for the claimants that the compensation awarded by the Tribunal needs to be re-assessed and modified.

The Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** *(supra).* Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate and funeral expenses. Besides this, the claimants, who are parents of the deceased, are entitled to Rs.44,000/- each, for loss of filial consortium.

The Tribunal, however, has erred in not granting compensation to the claimants towards future prospects. The claimants would be entitled to an addition of 25% in the income of the deceased towards future prospects as he was 45 years old and not a permanently salaried person.

The compensation thus payable to the claimants would be as follows:-

Sr. No.	**Head**	**Amount**
1.	Monthly Income	Rs.8,000/-
2.	Annual Income	Rs.8,000 x 12 = Rs.96,000/-
3.	Future prospects (25%)	Rs.96,000 x 25% = Rs.24,000
3.	Total annual income including future prospects	Rs.96,000 + Rs.24000 = Rs.1,20,000/-
5.	Deductions towards personal expenses (1/3)	Rs.1,20,000/3 = Rs.40,000/-
6.	Loss of annual future earnings	Rs.1,20,000 – 40,000 = Rs.80000/-
7.	Multiplier	14
8.	Loss of future earnings	Rs.80,000 x14 = Rs.11,20,000/-
9.	Loss of consortium	Rs.44000 x 3 = Rs. 1,32,000/-
10.	Funeral expenses	Rs.16,500/-
11.	Loss of estate	Rs. 16,500/-
	Total compensation	Rs.12,85,000/-

The claimants are, therefore, held entitled to a total sum of Rs.12,85,000/- as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization, which would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

With these modifications, the present appeals stand disposed of in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

September 14, 2022
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No