IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 29.08.2022

Date of Decision: October 10, 2022

1. FAO-5790-2014 (O&M)

Rekha & Others …………Appellants

Versus

Ramesh Kumar Singh & Others ………Respondents

2. FAO-7569-2014(O&M)

Shri Ram General Insurance Company Ltd. .... Appellant

Versus

Rekha & Ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Ramender Chauhan, Advocate
for the appellants in FAO-5790-2014
& for respondents No.1 to 4 in FAO -7569-2014.

Mr. Rajbir Singh, Advocate
Mr. Sanjeev Goyal, Advocate
for the appellant in FAO-7569-2014
& for respondent no.3-Insurance Company in FAO-5790-2014.

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<u>HARKESH MANUJA, J.</u>

This order of mine shall dispose of two appeals bearing FAO No. 5790 of 2014 titled as **Rekha & Others Vs Ramesh Kumar Singh & others** (filed by claimants/appellants for enhancement of compensation) and another bearing FAO No. 7569 of 2014 titled as **Shri Ram General Insurance Company Ltd. Vs. Rekha & Ors.** (filed by the Insurance Company for setting aside the award).

For convenience, the facts are taken from FAO No. 7569 of 2014 i.e. the appeal filed on behalf of the Insurance Company.

The brief facts of this case are that on 01.11.2012, Arun Sharma (deceased) was going on motor-cycle bearing registration No. HR-26-BN-7413 in relation to the work of his transport company. At about 9 PM when he reached just opposite Air Force Station Gate, a Tempo TATA Ace CNG bearing registration No. DL-1LR-3680 (hereinafter referred as 'offending vehicle') being driven by respondent No.1 in rash and negligent manner struck the motor-cycle, as a result of which Arun Sharma (deceased) fell down and sustained head injuries, who subsequently succumbed to the injuries suffered by him.

After going through the claim petition and evaluating the evidence led by both the parties, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.5/ driver herein. Considering the age of the deceased to be 45 years as well as determining his monthly income at Rs.15,000/-, the learned Tribunal gave 30% towards future prospects, applied 1/4th cut towards self-expenditure of deceased, awarded compensation in the following manner:-

S.No	Heads of Claim	Amount (in Rs)
1.	Pecuniary loss	24,57,000/-
2.	Treatment charges	5,27,502/-
3.	Consortium	1,00,000/-
4.	Loss of care and guidance	25,000/-
	Total	31,09,502/-

With regard to the liabilities, learned Tribunal held that respondents No.2/3 i.e. Driver/ owner of the offending vehicle and appellant/ Insurance Company, respectively, are jointly and severally liable to pay the compensation amount however, the whole of the liability was to be borne by appellant in terms of the insurance policy.

It is the said award dated 02.04.2014 which has been challenged by way of present two appeals.

Learned Counsel for the appellant/ Insurance Company contends that Learned Tribunal has wrongly held that the alleged accident has taken place due to rash and negligence driving of the respondent No.5/ driver herein of the offending vehicle solely relying upon the statement of PW-3 Vikrant Singh. He further contends that as per the statement of PW-3 the accident had taken place when the motor-cycle has struck the offending vehicle from the backside and in that case it was the responsibility of the deceased to maintain the reasonable distance between the two vehicles and the accident was caused due to his own negligence. He also contends that in that circumstance contributory negligence on part of both the vehicles cannot be ruled out and in support of his argument, he relies on the judgments of Hon'ble Supreme Court in ***Nishan Singh & Ors vs Oriental Insurance Company Ltd.***, 2018 AIR (SC) 2118 and another judgment of this court in ***Subhash Chandra and Others vs Satya Rani and Others***, 2013(4) PLR 329. Learned Counsel of the Insurance Company has also raised contention regarding the income of the deceased and submits that apart from the oral statement of PW-2 and the salary certificate Ex.PW2/B, there was nothing on record to prove salary of the deceased and therefore his salary could not have been taken more than the salary of a skilled labour which was Rs. 5487.29 in year 2012. He also contends that as the age of the deceased was more than 45 years, multiplier of 13 should have been applied and future prospects could also not be awarded @ 30%.

On the other hand, learned counsel for respondent No.1 to 4-claimants has argued that in the facts and circumstances of this case, the compensation awarded to the claimants/ appellants is on lower side and, therefore, prays for the enhancement of the compensation.

I have heard learned counsel for both the parties and perused the paper-book as well as records of this case. Regarding the negligence/contributory negligence of the deceased, I don't find much force in the argument of learned counsel of the appellant/ Insurance Company. Though it is factually correct that the motor-cycle of the deceased hit the offending vehicle from the back, however, the sequence of events as narrated by the PW-3, Vikrant Singh, who is the only eye witness of the accident, makes this apparent that there was no negligence/contributory negligence on part of the deceased. It would be appropriate to have a look at PW-3 statement in this regard :-

> *"On 01-11-2012, the deponent was driving his car and at about 9-00 PM when he was within the area of Air Force Station gate, Gurgaon, one Motor Cycle was going ahead from the car of the deponent and a Tempo Tata ACE CNG No. DL-1LR-3680, being driven by its driver rashly, negligently and at a very high speed by overtaking the car of the deponent as well as motor cycle and coming in front of motor cycle suddenly stopped, the Tempo without any indication and as a result the motor cycle struck behind the Tempo Tata ACE CNG No. DL-1LR-3680 and due to heavy impact the motorcyclist alongwith the motor cycle fell down and sustained head injuries and other multiple injuries on the person."*

Perusal of his statement shows that the offending vehicle overtook the car of the deponent as well as motor cycle and after coming in front of the motor cycle suddenly stopped without any indication, which led to the accident. If accident happened in the way as described by PW-3, no negligence can be attributed to the deceased, unless established otherwise by the appellant-Insurance Company. In these circumstances, if the

Insurance Company alleges negligence /contributory negligence, onus shifted upon it to prove the same. However, neither there was any suggestion regarding maintaining the appropriate distance during the cross examination of PW-3, nor any site plan was brought on record as was prepared by the police which was part of the challan. Rather, as a contrast, the eye-witness PW3, who was driving behind deceased, was put a suggestion alleging him to be negligent which, however, was never the case pleaded by the appellant-Insurance Company.

Judgments relied upon by the appellant/Insurance Company are not applicable in the facts and circumstances of this case. In **Nishan Singh** (supra), the offending vehicle was running ahead of the vehicle of the deceased for quite some time about one kilometer and even at the time when the truck running ahead pressed the breaks, there was distance of 10-15 feet between the vehicles. In **Subhash Chandra** (supra), the offending vehicle was a tractor along with a trolley and court assumed that by the nature of its size and a trailer on tow, a tractor cannot be driven fast and therefore contributory negligence was attributed to the deceased.

In view of the discussion held above, learned Tribunal rightly recorded that the accident was caused due the rash and negligent driving of the driver/respondent No.5 herein.

With respect to the argument raised by the learned counsel for the appellant/Insurance Company regarding the income of the deceased as Rs 15,000/- per month as well, I don’t find much force. The salary certificate of the deceased, issued by A-One Cargo and Logistics Company was brought on record as Ex.PW2/B which was corroborated by the testimony of PW2, Vishnu Sharma who is the owner of the company to the effect that the deceased has been working as a clerk for the last six months prior to the accident in question and was getting Rs 15,000/- per month plus other expenses.

Though, appellant tried to create fissures in the testimony of PW2 during cross examination, as he was not maintaining any statuary document but it failed to summon any record from him to negate the salary of deceased. Further, no fault can be found with the claimants on part of failure of the employer to maintain appropriate records.

It is also the settled principle of law that in accident claims, claimant need not to prove its case beyond reasonable doubt and burden of proof has to be discharged only on the basis of preponderance of probabilities. In this regard reliance can be placed on judgment of Hon'ble Supreme Court in the case of "***Bimla Devi and others Vs Himachal Road transport corporation and others***" reported as 2009 (3) RCR (civil) 805. Relevant para 15 of the same is reproduced herein-below: -

> "*15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties*."

Therefore, in view of the discussion held above, I find that the learning Tribunal correctly assessed the income of the deceased @ Rs.15,000/- per month.

However, argument of the learning counsel of the appellant/ Insurance Company with respect to the multiplier and future prospects are correct. In view of judgment of Hon'ble Apex Court in ***Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) 77, as the learned Tribunal held the age of the deceased to be more than 45 years, multiplier of 13 should have been applied. Further, in view of the law laid down in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***, 2017(4) RCR (Civil) 1009, as the deceased was engaged in a private job, the future prospects should have been awarded @ 25% of annual income. As the number of dependents was four, deduction of ¼th on account of personnel expenses is correct. Besides this, with respect to the compensation awarded under the other conventional heads, applying the principles of law laid down by Hon'ble Supreme Court in **Pranay Sethi's** case (supra), the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of consortium (parental, spousal and filinial) is to be awarded to the tune of Rs.44,000/- x 4 (Rs.1,76,000/-) and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads.

In view of what has been stated hereinabove, the appellants/ claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased (Rs.15,000 x 12)*	*Rs.1,80,000/-*
2.	*Add 25% of Future prospects*	*Rs.45,000/-*
3	*Total Income (Rs.1,80,000/- + Rs.45,000)*	*Rs.2,25,000/-*
4.	*Deduction ¼th (Rs.2,25,000/4)*	*Rs.56,250/-*
5.	*Multiplier of 13 as per age of 45 years 5 months*	*Rs.21,93,750/-*

	(Rs.1,68,750 /- X 13)	
6.	*Treatment charges*	Rs.5,27,502/-
7.	*Funeral Expenses*	*Rs.16,500/-*
8.	*Loss of Consortium (Rs.44000x4)*	*Rs.1,76,000/-*
9.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.29,30,252/-*
	Amount Awarded by the Tribunal	*Rs.31,09,502/-*
	Amount to be recovered	*Rs.1,79,250/-*

The grant of interest @ 6/7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in ***Smt. Supe Dei and others Vs. National Insurance Company Limited and other***,(2009) (4) SCC 513 approved in a subsequent judgment titled as ***Puttamma and others Vs. K.L. Narayana Reddy and another***, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

Disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

October 10, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*