IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

245

(1) **FAO-4193-2015 (O&M)**
Date of decision: 28.07.2022

Cholamandalam General Insurance Company Limited .....Appellant

Versus

Savita and others .....Respondents

(2) **FAO-6377-2015 (O&M)**
Date of decision: 28.07.2022

Savita and others .....Appellants

Versus

Sushil Kumar and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rajneesh Malhotra, Advocate
for the appellant in FAO-4193-2015 and
for respondent No.3 in FAO-6377-2015.

Mr. Yash Dev Kaushik, Advocate
for the appellants in FAO-6377-2015 and
for respondents No.1 to 4 in FAO-4193-2015.

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MANJARI NEHRU KAUL, J. (ORAL)

The above referred two appeals arise out of the same impugned award dated 07.03.2015 passed by learned Motor Accidents Claims Tribunal, Faridabad (for short, 'the Tribunal') and are being decided by this common order.

For the sake of convenience, the facts are being extracted from FAO-4193-2015 filed by the insurance company. The insurance company is in appeal against the abovesaid impugned award passed by the learned Tribunal wherein the following compensation was awarded to the claimants who are widow, two children and mother of Mahesh

Kumar (hereinafter referred to as 'the deceased'), who died in a Motor Vehicular Accident which took place on 20.11.2012:-

Sr. No.	**Head**	**Amount**
1.	Annual Income	Rs.1,60,000/-
2.	Deductions towards personal expenses (1/4th)	Rs.40,000/-
3.	Dependency of the claimants	Rs.1,20,000/-
4.	Future prospects (50%)	Rs.60,000/-
5.	Total dependency of the claimants	Rs.1,80,000/-
6.	Compensation after applying multiplier of '15'	Rs.27,00,000/-
7.	Transportation and funeral expenses	Rs.50,000/-
8.	Loss of consortium to claimant No.1	Rs.1,00,000/-
9.	Compensation to claimants No.2 and 3 for depriving them of their guardian	Rs.1,00,000/-
10.	Medical bills, special diet etc.	Rs.1,50,000/-
	Total compensation	Rs.31,00,000/-

The insurance company along with owner and driver of the offending vehicle was held jointly and severally liable to pay the amount of compensation to the claimants, along with interest @ 9% per annum, from the date of filing of the claim petition till actual payment. Claimant No.1 being widow of the deceased was held entitled to Rs.12,00,000/-, minor children of the deceased were held entitled to Rs.7,00,000/- each while mother of the deceased was held entitled to Rs.5,00,000/- from the compensation amount.

Learned counsel for the insurance company has vehemently argued that the impugned award deserves to be set aside primarily on the following grounds:-

(i) That the involvement of the offending vehicle i.e. three wheeler bearing registration No.HR-38-S-1546 in the accident in question was highly suspect and it was evidently a case wherein the vehicle had been planted to extract compensation. He submits that the aforesaid fact had to be appreciated in the light of delay of three weeks in the lodging of the FIR.

(ii) That the driver of the offending vehicle i.e. respondent No.5 in FAO-4193-2015 namely Sushil Kumar was not holding a valid and effective driving licence to drive the three wheeler in question at the time of the accident as his driving licence i.e. Ex.P-7 was found to be fake one. Moreover, he was holding two driving licences and hence the insurance company was not liable to indemnify the insured.

(iii) That the post-mortem report of the deceased showed traces of alcohol and hence if at all the accident had taken place with the offending vehicle as alleged, in the circumstances, it was a case of contributory negligence.

(iv) That the Tribunal had erred in assessing the future prospects to the extent of 50% even though it was a matter of record that the deceased did not have any fixed salary and was a doctor. Hence, it was evident that the quantum of compensation awarded was contrary to the 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 appearing for the claimants (appellants in FAO-6377-2015) while opposing the prayer and submissions of the learned counsel for the insurance company submitted that merely because there had been a delay in the registration of the FIR in question would not in any manner lead to an inference that the offending vehicle was not involved in the accident in question. It was submitted that after the registration of the FIR in question, the police had challaned the driver of the offending vehicle. He submits that it was but natural that the family of the injured would have been under tremendous trauma and stress after the accident in question and their first priority would naturally have been to get the deceased removed to a hospital and treated. Hence, the alleged delay in the lodging of the FIR would be of no consequence and still further the testimony of the witnesses proved that driver of the offending vehicle had indeed been rash and negligent and it was on account of the same that the deceased after being hit by the offending vehicle lost his life. It was also submitted by learned counsel that the deceased was a registered medical practitioner and as per his income tax returns which were duly exhibited and proved before the Tribunal his income after deductions came to Rs.1,79,130/-, however, the Tribunal erred in ignoring the said evidence and quantifying the income of the deceased at just Rs.1,60,000/- per annum. It was also urged that a wrong multiplier of 15 had been applied as the deceased was 32 years of age on the date of accident in question. A prayer was, therefore, made for reassessing and enhancing the award accordingly.

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

This Court does not find any merit in the submissions made by learned counsel for the insurance company that the offending vehicle had been planted to extract compensation. Sufficient cogent evidence was produced before the Tribunal qua the involvement of the offending vehicle in the accident in question and the deceased succumbing to the injuries received on account of rash and negligent driving of respondent No.5-Sushil Kumar. This Court also does not find any merit in the submissions made that since the driver of the offending vehicle was holding two driving licences, the insurance company was not liable to indemnify the insured. It is not disputed by the insurance company that one of the two driving licences produced was a valid and effective driving licence on the date of accident in question. This Court is also not in agreement with the submissions made by learned counsel for the insurance company that at best it could be said to be a case of contributory negligence as traces of alcohol were detected during the post-mortem of the deceased. No doubt, a great deal of stress was laid on this fact, however, learned counsel for the insurance company admitted that there was complete silence qua the percentage of the alcohol content found in the deceased in the post-mortem report. In the circumstances, his contention that at best it could be a case of contributory negligence also deserves to be rejected. However, coming to the next challenge with respect to the quantum of compensation, this Court does agree with the submissions made by learned counsel for the insurance company that the compensation awarded is not in consonance with the 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.

The submissions made by learned counsel for the claimants that the deceased was 32 years of age are contrary to the evidence on record because as per birth certificate produced before the Tribunal, the deceased was born on 10.05.1975 and the accident in question took place on 20.11.2012. Hence, the age of the deceased at the time of accident was more than 37 years. In the circumstances, the Tribunal cannot be faulted with as far as application of '15' as multiplier is concerned. The Tribunal definitely erred in awarding 50% compensation towards future prospects to the claimants which is not in consonance with the settled law. The claimants would stand entitled to compensation to the extent of only 40% towards future prospects. The compensation awarded under the conventional heads is also on the higher side and yet again contrary to the settled law which deserves to be reassessed and modified accordingly. However, Ex.P-9 which are the income tax returns of the deceased for the assessment year 2012-13, show that the total income of the deceased after deductions was shown as Rs.1,79,130/-. This Court, therefore, is of the considered opinion that the annual income of the deceased deserves to be reassessed and enhanced. It is accordingly rounded off to Rs.1,80,000/- per annum in the light of the Income Tax Returns (Ex.P-9).

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 widow, minor children and mother of the deceased, are entitled to Rs.44,000/- each, for loss of consortium including parental and filial consortium respectively.

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

Sr. No.	**Head**	**Amount**
1	Annual Income	Rs.1,80,000/-
2.	Future prospects (40%)	Rs.1,80,000/- x 40% = Rs.72,000/-
3.	Total annual income	Rs.1,80,000/- + Rs.72,000/- = Rs.2,52,000/-
4.	Deductions towards personal expenses (1/4th)	Rs.2,52,000/- / 4 = Rs.63,000/-
5.	Loss of annual future earnings	Rs.2,52,000/- (-) Rs.63,000/- = Rs.1,89,000/-
6.	Multiplier	15
7.	Loss of future earnings	Rs.1,89,000/- x 15 = 28,35,000/-
8.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
9.	Funeral expenses	Rs.16,500/-
10.	Loss of estate	Rs.16,500/
11.	Medical Bills	Rs.1,50,000/-
	Total compensation	Rs.31,94,000/-

The claimants are, therefore, held entitled to a total sum of Rs.31,94,000/- as compensation along with interest @ 9% per annum from the date of filing of claim petition till its actual realization, which shall be paid by respondents No.1 to 3 jointly and severally and would be apportioned to the claimants in the same ratio as directed by learned

Tribunal.

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

28.07.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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