IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-4044-2016 (O&M)

Reliance General Insurance Company Ltd.

...Appellant

VERSUS

Dinesh Kumar and others

...Respondents

(ii) FAO-4052-2016 (O&M)

Reliance General Insurance Company Ltd.

...Appellant

VERSUS

Smt.Rajbala and others

...Respondents

Date of Decision: November 07, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sanjeev Kodan, Advocate
for the appellant-Insurance Company.

Mr.Tapan Yadav, Advocate
for respondent No.1 (in FAO-4044-2016) and
for respondents No.1 to 3 (in FAO-4052-2016).

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ARCHANA PURI, J.

Both these appeals have been filed by the Reliance General Insurance Company, thereby, challenging the manner of accident, involvement of Deepak Yadav and extent of compensation granted, on account of death of Mahender Singh, in a motor vehicular accident and on account of injuries sustained by Dinesh Kumar, in the same accident, which

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took place on 28.03.2014.

FAO-4044-2016 has been filed by the Insurance Company to challenge the Award qua the compensation granted, on account of injuries sustained by Dinesh Kumar, in a motor vehicular accident and FAO-4052-2016 has been filed by the Insurance Company to challenge the Award passed in favour of widow, children and parents of deceased Mahender Singh, who died, in the same accident.

Initially, two separate claim petitions were filed, on account of death of Mahender Singh and injuries sustained by Dinesh Kumar, in a motor vehicular accident. As per version of the respondents-claimants, on 28.03.2014, Mahender Singh and Dinesh Kumar, while being occupants of Xylo car bearing registration No.HR-35H-6733, were travelling from village Naaysarana to Jadupur. Respondent No.1-Deepak Yadav (in the claim petitions) was driving the said vehicle, in a rash and negligent manner, as a result whereof, the said vehicle lost control and hit against the tree of Siras. Mahender Singh and Dinesh Kumar had sustained multiple injuries, on their persons. However, these injuries proved fatal for Mahender Singh and he had died, while being taken to Jaipur. The accident had taken place, due to rash and negligent driving of the aforesaid vehicle by respondent No.1-Deepak Yadav (in the claim petitions).

In the claim petitions, respectively, it has been asserted that deceased Mahender Singh was 26 years old and was working as driver, as well as indulging in agricultural work and business and thus, earning Rs.30,000/- per month. Even, the claimants asserted themselves to be dependent upon the earnings of Mahender Singh and thus, sought

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compensation.

So far as Dinesh is concerned, in the claim petition, he had also asserted himself to be 26 years old and stated himself to be driver and indulging in agricultural work as well as business and earning Rs.35,000/- per month.

In reply/written statement, respondent No.1 and 2-driver and owner (in the claim petitions), have denied about having caused the accident. In fact, they had asserted that no such accident was caused by respondent-Deepak Yadav, while driving the Xylo car in question, in rash and negligent manner. In fact, the accident, might have been caused by some unknown vehicle and false FIR has been registered against Deepak Yadav.

The Insurance Company, in its separate replies, had also denied the factum of accident and also asserted that vehicle in question and respondent-Deepak Yadav, have no bearing with the accident and had been falsely implicated, later on, by twisting the facts.

From the pleading of the parties, following issues were framed:-

1. *Whether Mahender son of Daya Ram died and petitioner Dinesh Kumar sustained injuries in a road accident which took place on 28.3.2014 in the area of village Jadupur (police station Sadar Narnaul) due to rash and negligent driving on the part of respondent no.1, the driver of Xylo No.HR-35H-6733?OPP*

2. *To what amount of compensation, if any, and from whom the claimants are entitled?OPP*

3. *Whether respondent no.1 did not hold a valid and effective driving licence, if so to what effect?OPR-3*

4. *Relief.*

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After adducing of the evidence by the parties, an Award of Rs.14,62,300/- was passed in favour of the claimants, vis-a-vis, death of Mahender Singh and Award of Rs.1,15,000/- was passed, vis-a-vis, injuries sustained by Dinesh Kumar, in the accident. All the respondents, i.e. driver, owner and insurance company, were, jointly and severally, held liable to pay the compensation, along with interest @6% per annum, from the date of institution of the petition, till realization. Even, detail of apportionment of the Awarded amount and manner of its disbursement had also been given, qua the compensation granted to the claimants, on account of death of Mahender Singh.

Feeling aggrieved by the aforesaid Award, Reliance General Insurance Company has filed the present appeals.

In pursuance of the notice issued, contesting respondents had made appearance.

I have heard learned counsel for the parties and have gone through the lower Court Record.

In the reply, filed by driver and owner as well as the insurance company, the factum of accident caused by Deepak Yadav as well as involvement of Xylo car bearing registration No.HR-35H-6733 has been denied. The imputation of rashness and negligence, on the part of Deepak Yadav, driver of the offending vehicle, has been denied.

It is assiduously submitted by learned counsel for the appellant that it is case of driver swapping to grab the compensation, because the accident, as per version of the claimants, had taken place on 28.03.2014. DDR No.14 Ex.R1 was got registered on the next date i.e. 29.03.2014 by

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Deepak Yadav and he had stated about Dinesh Kumar s/o Mahipal Yadav, to be the driver of offending vehicle. However, on 05.04.2015, the FIR was registered, after a delay of 7 days by Dinesh Kumar s/o Mahipal Yadav, while stating that Deepak Yadav was the driver of the offending vehicle, at the time of accident. It is submitted that learned Tribunal fell in error, in reaching the conclusion about Xylo car bearing registration No.HR-35H-6733, to be driven by Deepak Yadav, at the relevant time, which caused the accident and has wrongly imputed rashness and negligence, on the part of Deepak Yadav.

However, the aforesaid submission does not hold good. Undisputedly, as per the version of the claimants, the accident had taken place on 28.03.2014. Also, it is not disputed that FIR was got registered on 05.04.2014. It is pertinent to mention that at first instance, in the reply filed to the claim petition, the driver and owner have denied about their involvement in the accident in question. In this regard, it is important to make reference to the statement of Deepak Yadav, which forms the basis of DDR Ex.R1. In Ex.R1, Deepak Yadav had stated about Dinesh Kumar s/o Mahipal Yadav, to be the driver of the vehicle and also stated that he was occupant of the vehicle in question. However, said Deepak Yadav had stepped into witness box as RW-1 and he has categorically stated that Ex.R1, bears his signatures. Though, he had taken the plea that his signatures were obtained on blank papers but this submission, appears to have been taken, only to wriggle out of the liability, to be so fastened upon him. In his examination-in-chief, he has categorically stated that he was driving the vehicle, at the time of accident. He also stated that Mahender

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Singh was sitting on the seat of conductor and Dinesh Kumar was sitting on middle seat. While facing cross-examination, again he had reiterated that he was driving the vehicle, on that day and that Mahender Singh and Dinesh Kumar, were also accompanying him. He also deposed further that when his vehicle reached near Jadupur, accident had taken place and his vehicle struck against the tree and Mahender Singh and Dinesh Kumar had suffered serious injuries. He further deposed that he fell down from the vehicle and he did not sustain any injury. Thus, from his testimony only, it is crystal clear that he was driving the offending vehicle, at the relevant time.

Not only this, even RW-2 ASI Jagdish, had categorically stated about having recorded the DDR. In the cross-examination, he had stated that on 05.04.2014, an application was moved by Dinesh Kumar to him and upon that, he made an enquiry and came to know about the accident to have taken place due to negligence of Deepak Yadav and case bearing FIR No.78 dated 05.04.2014 under Sections 279, 337 and 304-A IPC was registered against Deepak Yadav in Police Station Sadar Narnaul. He had further deposed that during the course of investigation, it came to his knowledge about the accident to have taken place and that Deepak Yadav was driving the offending vehicle bearing registration No.HR-35H-6733 and that accident was caused by Deepak Yadav, while driving the offending vehicle, at a high speed and in rash and negligent manner. He also deposed that he arrested Deepak Yadav and after completion of investigation, challan was presented in the Court against Deepak Yadav. He proved the copy of FIR and copy of report under Section 173 Cr.P.C., which are Ex.P1 and Ex.P2, respectively. He further specifically stated that it was found that Deepak

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Yadav intentionally got recorded wrong report to save himself from the liability of this accident.

Even though, the insurance company has placed reliance upon the statement of RW-3 Suryadeep Singh Thakur, who is the Assistant Manager (Legal) of the insurance company, but however, it is pertinent to mention that in the affidavit, he had only stated about Deepak Yadav, to be not driving the vehicle bearing registration No.HR-35H-6733, at the relevant time and that he was sitting behind the seat of driver. This version, as such, does not carry much weight, on account of the admission coming from the mouth of Deepak Yadav himself, as well as the Investigating Officer, having conducted the investigation, qua the same and reaching the conclusion, about the accident to have been caused, due to rash and negligent driving of vehicle bearing registration No.HR-35H-6733, by Deepak Yadav.

As such, learned Tribunal had rightly reached the conclusion about the accident to be result of rash and negligent driving of vehicle bearing registration No.HR-35H-6733 by respondent No.1-Deepak Yadav and same resulted into fatal injuries, on the person of Mahender Singh and that injuries were also caused to Dinesh Kumar, which fact also stand established from the evidence adduced before the Tribunal.

As such, the submission, on the count, that it is a case of driver swapping, is rejected.

Furthermore, learned counsel for the insurance company has submitted that so far as, the compensation awarded on account of death of Mahender Singh, is concerned, it is on a higher side. Even though, it is the

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version of the claimants that deceased Mahender Singh was working as driver and was also indulging in agricultural work as well as business, but however, no specific evidence, has been led to substantiate his avocation. Very true, that no satisfactory evidence, with regard to the avocation followed by Mahender Singh, as such, has come on record. In the given circumstances, he is to be considered as unskilled worker. Learned Tribunal definitely fell in error, while considering the driving licence Ex.R6 and concluding about wages of deceased Mahender Singh to be Rs.8,900/- per month and while taking his labour for 20 days, has assessed his income as Rs.6,500/- per month. However, in any manner, only on the basis of the driving licence, the deceased, as such, cannot be concluded to be working as driver. In these circumstances, the earnings of the deceased, has to be taken as unskilled worker. As such, in the modest estimate, his earnings are taken to be **Rs.5,800/-** per month. Learned Tribunal had also fell in error in awarding Rs.3,95,760/- as future prospects and Rs.50,000/- as consortium as well as Rs.20,000/- as last rites expenses.

However, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, addition of 40% has to be taken as future prospects, considering the age of the deceased. Thus, 40% of the monthly income is **Rs.2,320/-** and total comes to be **Rs.8,120/-**. Considering the number of dependents of deceased Mahender Singh, 1/4th is to be deducted as personal expenses. Taking it to be so, the monthly income is worked upon as **Rs.6,090/-** and annual dependency, as such, is worked upon as **Rs.73,080/-**. Considering the law laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77***, the

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suitable multiplier to be applied is '**17**' and compensation, as such, comes to be **Rs.12,42,360/-**.

Besides the aforesaid, learned Tribunal had awarded Rs.50,000/- as consortium and Rs.20,000/- as last rites expenses. However, it is pertinent to mention that in ***Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130*** and ***United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410***, it has been held laid down by the Hon'ble Supreme Court that consortium is not limited to '**spousal consortium**' and it also includes '**parental consortium**' and '**filial consortium**'. In United India Insurance Company's case (supra), the loss of consortium was granted to various claimants to the extent of Rs.40,000/- each. It was held that apart from spousal consortium, parental and filial consortium is also payable. Endorsing this view in ***The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020***, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

Thus, in the light of the aforesaid, all the respondents-claimants, vis-a-vis, death of Mahender Singh, are entitled to '**spousal consortium**', '**filial consortium**' and '**parental consortium**', to the extent of Rs.40,000/- each, the total whereof comes to be **Rs.2,00,000/-**.

On account of funeral expenses, the amount granted by the Tribunal is on higher side and it is thus reduced to **Rs.15,000/-** as per

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Pranay Sethi's case (supra). Thus, compensation comes to be **Rs.14,57,360/-**. However, the amount Awarded by learned Tribunal, in the present case is to the extent of **Rs.14,62,300/-**. Therefore, the amount of difference, as granted by learned Tribunal and as worked upon aforesaid, is not such, which warrants for interference in this appeal bearing FAO-4052-2016.

In FAO-4044-2016, the insurance company has also assailed the Award qua the extent of compensation, so granted to Dinesh Kumar. It is submitted by learned counsel for the appellant-insurance company that even though, no record has been produced with regard to the expenditure incurred on the treatment of injured Dinesh Kumar, but even then, learned Tribunal has wrongly awarded sum of Rs.50,000/- on account of treatment. It is further submitted that even an amount of Rs.50,000/- has been wrongly granted, on account of permanent disability. Thus, the compensation, vis-a-vis, injuries caused on the person of Dinesh Kumar, has been worked upon on higher side.

It is pertinent to mention that Dinesh Kumar himself has stepped into witness box as PW-4 and in his affidavit, Ex.PW4/A, he has deposed about having sustained injuries, in the accident in question and he also deposed about having remained admitted in the hospital from 30.03.2014 to 28.04.2014. He also stated that he had been operated upon. Even, PW-5 Giri Raj Parshad, Medical Record Keeper, had produced the medical record of SMS Hospital, Jaipur, vis-a-vis, admission and treatment of Dinesh Kumar and same is Ex.PW5/A.

Perusal of Ex.PW5/A clearly reveals about admission of Dinesh

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Kumar in the hospital w.e.f 30.03.2014, till 28.04.2014. It also depicts that he had sustained *fracture extending into both pedicle and posterior part of body of C2 vertebra as well as extending through pedicolaminar junction on right side. The fracture is extending through the junction of dens with C2 vertebral body.* The disability certificate of injured Dinesh Kumar has also been proved as Ex.PW6/A, which reveals about Dinesh Kumar to be having *fracture cervical spine injury and that no sensory motor deficit was seen and movement of spine was restricted of extension and flexion and he was opined to have suffered permanent disability to the extent of 20%.*

No doubt, the bills of the expenditure incurred on his treatment, as such, have not come on record, but however, the fact remains that The Motor Vehicles Act, is in the nature of social welfare legislation and its provisions make it clear that compensation should be justly determined. The measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation, should not be so abysmal, as to lead one to question, whether our law, values human life. If it does, as it must, it must provide a realistic recompense, for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Thus, the Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his life, on account of his physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count, but the

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functional disability, on account of injury sustained, can always be on higher side.

Keeping in view the same, it is pertinent to mention that factum of admission of Dinesh Kumar in the hospital, as such, is amply established, from the medical record, proved in evidence. In these circumstances, even though, the bills, as such, have not been produced, but fact remains, Dinesh Kumar remained admitted for good long period, which should be taken note of and he had suffered spine injury, on account of which, he had 20% permanent disability.

Looking at the age of injured Dinesh Kumar, at the relevant time, definitely, he had suffered, more specifically, when he states to be following the avocation of a driver. Considering all these circumstances, the compensation, so awarded, to the extent of **Rs.1,15,000/-**, cannot be said to be on higher side, which warrants interference by this Court. Hence, the submission, so made, by learned counsel for the appellant-insurance company, on this count, is also rejected.

In the light of aforesaid discussion, both the appeals i.e. FAO-4044-2016 and FAO-4052-2016, sans merit and thus, are hereby dismissed.

November 07, 2022 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**

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