IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-600-2016 (O&M)

Reserved on: 27.10.2022

Pronounced On: November4, 2022

United India Insurance Company Ltd …Appellant

Versus

Ram Prasad and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

Mr. Ekta Thakur, Advocate
for respondents No.1 to 4.

None for respondents No. 5 and 6.

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HARKESH MANUJA, J.

1. Present appeal lays challenge to an award dated 09.07.2015 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal'), whereby, a sum of Rs.7,73,000/- has been awarded as compensation in favour of respondents No. 1 to 4/ claimants along with interest @ 7.5% per annum.

2. The brief facts which led to the filing of present appeal are that on 5.08.2014, Ram Pyari (deceased) was going from Kala Gram light point to her home to New Indira Colony on foot. When she reached near light point, respondent no.5 herein came driving his car (offending vehicle) No. DL-1C-J-4470 at very high speed, rashly, negligently and struck the same against deceased. Consequently, she fell down and suffered multiple grievous injuries including head injury. Thereafter, she was taken to PGI, where she was declared as brought dead. On the statement of Ram Kali (Daughter-in-law of deceased), an FIR no. 323 dated 05-08-2014 was registered at Police

Station Manimajra u/s 279 and 304-A IPC against driver/ respondent no. 5 herein.

3. In the claim petition filed by respondents No. 1 to 4/ claimants, being dependent upon the deceased, learned Tribunal having held that accident occurred on account of rash and negligent driving of the offending vehicle, awarded compensation in the following manner:

Sr.No.	**Particulars**	**Amount(Rs.)**
1.	Annual income of deceased(6000x 12)	Rs. 72,000/-
2.	Multiplier of 9	Rs.6,48,000/-
3.	Funeral Expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 1,00,000/-
	TOTAL COMPENSATION:	Rs. 7,73,000/-

4. Present appeal has been filed by the appellant/ Insurance Company for setting aside of the award passed by the learned Tribunal.

5. Learned counsel for the appellant/ Insurance Company contends that finding of learned Tribunal qua negligence of offending vehicle is contrary to the facts as well as the evidence available on record of present case and thus liable to be set aside. He further contends that accident in question occurred due to the negligence of deceased while jumping over railing in the centre of road as a result of which she fell down and alleged offending vehicle ran over her. Thus, he contends that it is a case of contributory negligence and compensation awarded by learned Tribunal is liable to be reduced accordingly. He also contends that as per Ex. R-3 i.e. Aadhaar card of deceased, she was around 79 years of age and hence no multiplier should have been applied while computing dependency of

deceased. He further contends that no deduction has been made from income of deceased on account of personal expenses.

6. On the other hand, learned Counsel for respondents No.1 to 4/ Claimants contends that learned Tribunal has rightly held that accident was caused due to rash and negligent driving of respondent no.5 herein. He further contends that as per Ex. P-3 i.e. postmortem report, deceased was 60 years of age at the time of accident and therefore, learned Tribunal rightly applied multiplier of 9 while computing dependency of deceased. He also contends that deceased was working as a vegetable vendor in vegetable market, Sector 26, Chandigarh, and was earning around Rs. 10,000/- per month, therefore, learned Tribunal erred in assessing notional income of deceased as Rs 6000/- per month. He further contends that future prospects have not been awarded while computing dependency and further, nothing has been awarded under the conventional heads.

7. Having heard learned counsel for the parties and gone through the records, I find no force in the argument raised on behalf of learned counsel for appellant/ Insurance Company regarding negligence of deceased. His contention that deceased was jumping across the railing between road, as a result of which she fell down and offending vehicle ran over her, cannot be relied upon in the absence of any pleadings as well as the evidence available on record. Also, in this regard, testimony of eye-witness Ram Kali (daughter-in-law of deceased), who appeared as PW-2, is worth consideration. She categorically deposed that her mother-in-law was crossing the railing on centre of road, when offending vehicle hit her and she fell down. Relevant portion of statement of aforementioned eye-witness is reproduced for reference herein below :-

> *** “I saw my mother-in-law Ram Pyari crossing the railing on the center of road towards Chandigarh from Panchkula” ***

In addition to that, reliance can also be placed upon FIR recorded on the statement of eye-witness, where she has stated that her mother-in-law was crossing the railing between road when offending vehicle came and hit her. Furthermore, neither any evidence has been placed on record which can prove negligence of deceased in the accident nor there are any pleadings to this effect in written statement of either of the party before learned Tribunal below. Hence, contention raised on behalf of appellant/ Insurance Company qua negligence of deceased is liable to be rejected in absence of any substantive proof in this regard.

8. So far as argument raised on behalf of appellant/ Insurance Company on the issue of age of deceased is concerned, I am of view that there is substantial difference in the age of deceased as claimed by respective parties. As per Ex. R-3 i.e. Aadhaar card of deceased, she has been shown to be around 79 years of age at the time of her accident whereas Novat Ram son of deceased, states in his affidavit Ex. PW1/A that her mother was 58 years of age at the time of accident. Learned Tribunal has relied upon post mortem report of deceased (Ex. P-3) where her age is shown as 60 years. Also, by careful examination of records of the case, I find that age of eldest son of deceased at the time of filling of claim petition was 42 years. Therefore, considering educational status, avocation of deceased’s family, gap between age given in aadhar card and postmertum report and age of eldest son of deceased, it would not be too much to assume that age of deceased as given in aadhar card is incorrect. Thus, learned

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Tribunal has rightly considered age of deceased as 60 years on the basis of her postmertum report.

9. On the issue of income of the deceased learned Tribunal held that though there was no direct and convincing evidence on record regarding income of deceased as vegetable vendor. However, as the deceased was admittedly a housewife her notional income as a housemaker on account of her contribution in household course was taken to be equivalent to income of the semi-skilled worker, and, therefore, assessed it as Rs.6000/-. Though learned Tribunal was right while considering the income of the deceased as a semi-skilled worker in view of the judgement of Honble Apex Court in **Lata Wadhwa & Ors. Vs. State of Bihar and Ors.** in Writ Petition(Civil) No. 232 of 1991, but, at relevant time, as per Instruction dated 12.08.2014 issued by General Administration Department Haryana Government minimum wages of semi-skilled worker was approximately Rs.9000/- per month. It may further be pointed out that this court in FAO No. 3310 of 2012 titled as **Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others** have interpreted **Lata Wadhwa's case (supra)** to the effect that deduction on account of personal expenses out of notional income is not warranted and observation of Coordinate Bench of this court in this regard are reproduced herein below :-

> *"After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of Lata Wadhwa's case (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family.*

Since it is a case where the Courts are confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

10. Thus, in order to award just and reasonable compensation, income of the deceased is taken as Rs. 9,000/-. As discussed above, no amount is required to be deducted on account of personal expenses, as the age of the deceased was 60 years, and the future prospects are being granted @ 10%. Besides this, learned Tribunal awarded Rs. 25,000/- towards funeral expense and Rs. 1,00,000/- towards loss of estate. However, applying the principles of law laid down by Hon'ble Supreme Court in **"National Insurance Company Ltd. Vs. Pranay Sethi and others"**, 2017(4) RCR (Civil) 1009, compensation under the said heads need to be reduced from Rs. 25,000/- to Rs. 16,500/- and from Rs. 1,00,000/- to Rs.16,500/- respectively. Furthermore, the claimants are entitled for Rs. 1,76,000 (44,000 X 4) as compensation under the head of loss of parental consortium.

11. In view of what has been stated hereinabove, the respondent no. 1 to 4 /claimants shall be entitled for the grant of following compensation:-

Sr.No.	***Nature***	***Amount in Rupees***
1.	*Annual Income of deceased (9000x12)*	*Rs. 1,08,000/-*
2.	*Add 10% of Future prospects*	*Rs.10,800/-*
3	*Total Income*	*Rs.1,18,800/-*
4.	*Multiplier of 9 (Rs.89,100 X 9)*	*Rs.10,69,200/-*

5.	*Funeral Expenses*	*Rs.16,500/-*
6.	*Loss of Consortium*	*Rs.1,76,000/-*
7.	*Loss of Estate*	*Rs.16,500/-*
	Total Compensation	*Rs.12,78,200/-*
	Amount Awarded by the Tribunal	*Rs. 7,73,000/-*
	Enhanced Amount	*Rs.5,05,200/-*

12. The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case, rather as per observations made by Hon'ble Supreme Court in "**Smt. Supe Dei and others Vs. National Insurance Company Limited and other",** 2009(4) SCC 513, which were approved in a subsequent judgement titled as **"Puttama and others Vs. K.L. Narayana Reddy and another",** 2004(1) RCR(Civil) 443, the interest is being enhanced to 9% per annum on the amount of compensation awarded to the claimant from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimant shall be deducted from the enhanced compensation.

13. Due to the afore-mentioned reasons, the present appeal is disposed of in the above-mentioned terms.

14. All pending applications if any stand disposed of accordingly.

November 4, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

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