

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-7049-2015 (O&M)
Date of Decision: November 22, 2022

National Insurance Company Ltd.

...Appellant

VERSUS

Mange Ram and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mrs.Swantantar Kapoor, Advocate
for the appellant.

Mr.Hari Om Verma, Advocate
for respondent No.6

ARCHANA PURI, J.

The present appeal has been filed by National Insurance Company Ltd. through its Branch Manager, thereby, assailing the Award dated 06.07.2015 passed by learned Motor Accident Claims Tribunal, whereby, compensation to the extent of Rs.22,95,000/- has been granted to respondents No.1 to 4 (claimants), on account of death of Sudesh Rani, in a motor vehicular accident.

Initially, respondents No.1 to 4 i.e. Mange Ram as well as his children, had filed the claim petition, thereby seeking compensation, on account of death of Sudesh Rani, in a motor vehicular accident, which took place on 19.06.2014. As per version of the claimants, on 19.06.2014, Sudesh Rani along with her husband i.e. respondent No.1-Mange Ram, was going from her village Yara to Shahabad, on motorcycle bearing registration

No.HP-12C-7307, which was driven by respondent No.5-Anil Kumar @ Giddu, son of Babu Ram, in a rash and negligent manner. As a result of this accident, Sudesh Rani had sustained several injuries, which proved fatal. Thus, qua her death, respondents No.1 to 4-claimants, sought compensation to the tune of Rs.40 lakh, in the claim petition. It is asserted in the claim petition that Sudesh Rani was working as Aanganwari Worker and was homemaker as well as indulging in knitting and stitching work. She had salary of Rs.7,500/- per month and was earning Rs.15,000/- per month, by doing knitting and stitching work. The claimants asserted themselves to be dependent upon earnings of deceased Sudesh Rani and thus, sought compensation.

In reply, driver and owner of offending vehicle, denied the factum of accident and also denied rashness and negligence, on the part of respondent-Anil Kumar @ Giddu, while driving the truck bearing registration No.HP-12C-7307. They pleaded that the claim petition has been filed only to extract amount of compensation.

The appellant Insurance Company too had contested the claim petition, mainly, on the ground of maintainability and about the claimants to be having no locus standi to file the claim petition and it was asserted to be bad for mis-joinder and non-joinder of necessary parties. It is further alleged that there was violation of terms and conditions of the insurance policy, as respondent-Anil Kumar @ Giddu was not having a valid and effective driving licence, at the time of accident. Thus, Insurance Company, questioned the liability to indemnify the liability of respondent-driver Anil Kumar @ Giddu, with regard to payment of compensation to the claimants.

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

- 1. Whether the accident resulting into death of Sudesh Rani took place due to rash and negligent driving of respondent No.1, while driving truck No.HP-12C-7307?OPP.*
- 2. If issue No.1 is proved to what amount of compensation and from whom the claims are entitled to?OPP*
- 3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.3 is not liable to pay any compensation?OPR*
- 4. Relief.*

After adducing of the evidence by the parties, the award of Rs.22,95,000/- was passed in favour of the present respondents No.1 to 4 and the appellant well as respondents No.5 and 6, were jointly and severally held liable to pay the amount of compensation. Besides the same, in the Award, the detail of apportionment of awarded amount and manner of its disbursement, has also been given.

Feeling aggrieved by the aforesaid Award, National Insurance Company Ltd. has filed the present appeal.

In pursuance of the notice issued by the Court, contesting respondent No.6, who is owner of the offending truck, had made appearance through counsel, whereas, remaining respondents did not make appearance, despite service.

I have heard learned counsel for the parties and perused the lower Court record.

Even though, in the reply, filed by the driver and owner, they had denied the factum of accident and had also denied the imputation of

rashness and negligence, on the part of the driver of the offending vehicle, but however, no such evidence, to so substantiate the plea, has been brought on record. In fact, Mange Ram, husband of deceased Sudesh Rani, who was driving the motorcycle, of which the deceased was the occupant, at the relevant time, has categorically deposed about rashness and negligence, on the part of the driver of the offending vehicle. FIR was got registered, at his instance, soon after the accident in question and therein, he had given the detail of the manner of causing of the accident, at the behest of Anil Kumar @ Giddu, driver of the offending vehicle. Investigation was conducted by the police. Report under Section 173 Cr.P.C. was filed against Anil Kumar @ Giddu. Charge was also framed against him.

Even, in his affidavit Ex.P1/A, PW-1 Mange Ram has categorically deposed about the rashness and negligence, on the part of Anil Kumar @ Giddu, while driving the truck bearing registration No.HP-12C-7307, which caused the accident.

Learned counsel for the Insurance Company now submits that no negligence can be attributed on the part of respondent No.4-Anil Kumar @ Giddu (driver of offending vehicle), as PW-1 Mange Ram has admitted a suggestion to be correct that he entered from a remote/village road to the main road for coming to Shahabad and he also admitted that in his statement before the police, he got recorded that the accident took place, while he was taking a turn from village road to main road. In the light of the same, it is submitted that in fact, claimant-Mange Ram was at fault, while driving his motorcycle.

However, the aforesaid submission is not tenable. Simply

because of this suggestion having been admitted by Mange Ram, *ipso facto*, does not establish negligence, on his part. It had to be so established by the respondent-driver. However, it should be noted that neither owner nor driver, as such, have stepped into witness box. In fact, in their reply to the claim petition, they had denied the accident, in toto. Even, respondent-driver Anil Kumar @ Giddu, had not stepped into witness box to deny rashness and negligence, on his part. In these circumstances, the testimony of Mange Ram and documents, relating to the criminal case, registered against driver Anil Kumar @ Giddu and the pending trial, learned Tribunal had rightly decided the issue, qua accident, being result of rashness and negligence, on the part of Anil Kumar @ Giddu, driver of the offending truck. Thus, submission so made by learned counsel for the appellant, on this count, is hereby rejected.

Besides the aforesaid, learned counsel for the insurance company has also challenged the Award, on the quantum of compensation, so granted.

From the material coming on record, it is evident that deceased Sudesh Rani was working as Aanganwari Worker. PW-1 Mange Ram, in his affidavit Ex.PW1/A, has categorically deposed about the avocation, so followed, by the deceased. Furthermore, even, PW-2 Madan Lal, Assistant in the office of Women and Child Development Project Officer, Shahabad, had also deposed about deceased Sudesh Rani, to be working as Aanganwari Worker, at the time of her death and she was receiving salary of Rs.7,563/- per month. He had proved the certificate Ex.P1. Thus, it stands established that deceased Sudesh Rani was working as Aanganwari Worker

and was earning Rs.7,563/- per month.

Learned counsel for the appellant has assiduously submitted that since it was not permanent job, therefore, learned Tribunal had wrongly worked upon the compensation, so granted. However, the submission so made, is not tenable.

PW-2 Madan Lal has categorically deposed about the retirement age of Aanganwari Worker to be 65 years. In the light of the same, it cannot be said that it was only for a short duration of time that the deceased was working as Aanganwari Worker. In these circumstances, in view of the certificate Ex.P1, the earnings of the deceased have been rightly taken to be Rs.7,563/- per month and the annual earnings, as such, comes to be Rs.90,756/-, which has been rounded off as Rs.91,000/- per annum.

As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% is required to be made, instead of 50%, as future prospects, as done by learned Tribunal, in the case in hand. The age of the deceased is established to be 38 years. Thus, the total income of the deceased comes to Rs.10,588/- per month i.e. (Rs.7563+Rs.3025[40%]). Keeping in view the husband and number of children of the deceased, 1/4th is to be deducted, on account of personal and living expenses of the deceased and after the said deduction, it comes to be Rs.7941/- per month. Thus, the annual dependency, is worked upon to be Rs.95,292/-.

Besides the aforesaid earnings, in the capacity of being Aanganwari Worker, learned counsel for the appellant submits that the claimants are not entitled to any compensation on account of services

rendered by the deceased in the capacity of being homemaker.

However, the aforesaid submission, is not tenable. Even though, the deceased was working as Aanganwari Worker but however, it is pertinent to mention that in our Indian society, even if, the woman goes out of house to earn livelihood, but even then, she contributes a lot towards the household affairs. She renders multifarious duties towards her husband and children and value of the same, has rightly been taken by the Tribunal as Rs.3,000/- per month. Considering the same, the annual valuation is worked upon as Rs.36,000/-. As such, the total of the income, including the value of services, comes to Rs.1,31,292/- per annum. Keeping in view the age of the deceased, the suitable multiplier to be applied is '15' as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*** and it comes to be Rs.19,69,380/-.

Besides the aforesaid amount, it is pertinent to mention that learned Tribunal had granted consolidated amount of Rs.1 lakh, as consortium to claimant Mange Ram, being husband and Rs.1 lakh was granted to the minor children i.e. claimants No.3 and 4, towards love and affection, as well as Rs.25,000/- towards funeral expenses.

However, it is pertinent to mention that three Judge Bench of the Hon'ble Supreme Court in the decision rendered in ***Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018(18) SCC 130***, had given comprehensive interpretation to the expression '**consortium**' to include '**spousal consortium**', '**parental consortium**' as well as '**filial consortium**'. It is further laid down that '**loss of love and affection is comprehended in loss of consortium**'. Hence, there is no

justification to award compensation towards loss of love and affection, as a separate head.

Thus, in the light of the aforesaid, respondents No.1 to 4-claimants, each are entitled to compensation, on the count of 'loss of consortium'. In *Pranay Sethi's case (supra)*, the extent of consortium which should be paid is stated to be Rs.40,000/- and these findings have been further endorsed by the Hon'ble Supreme Court in the case titled as '*The New India Assurance Company Limited v/s Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*'. It was further held in *Pranay Sethi's case (supra)* that the aforesaid amount should be enhanced by 10% after every three years. As the said judgment is dated 31.10.2017, so there has to be enhancement of 10%, which comes to be Rs.44,000/- as 'loss of consortium'. In the light of the same, respondents No.1 to 4, are entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.44,000/- each, and thus, the total comes to be Rs.1,76,000/-.

Besides the same, even the compensation granted qua funeral expenses, has been granted on a higher side. As per *Pranay Sethi's case (supra)*, Rs.15,000/- is to be granted as funeral expenses, which also needs additional enhancement to the extent of 10%, after every three years, which comes to Rs.16,500/-. On similar terms, on account of loss of estate also, another amount of Rs.16,500/- is to be granted. But however, as observed aforesaid, no compensation is to be granted, on the count of loss of love and affection, as done by the tribunal. Working upon the same, the total of the compensation comes to **Rs.19,69,382 + Rs.1,76,000 + Rs.16,500 + Rs.16,500/-** which comes to be **Rs.21,78,380/-**. Therefore, compensation

granted by the Tribunal, to the extent of Rs.22,95,000/- is scaled down to Rs.21,78,380/-.

Furthermore, learned counsel for the insurance company submits that respondent No.5-Anil Kumar @ Giddu, was not having a valid licence, to drive the kind of vehicle, which he was driving, at the relevant time. He was entitled to drive 'PSVBUS' and not the heavy transport vehicle.

However, this submission is not tenable, as there is specific endorsement on the licence of respondent No.5-Anil Kumar @ Giddu that he was entitled to drive the transport vehicle. The offending vehicle was a transport vehicle. In the light of the same, he was entitled to drive the truck, being a transport vehicle. Thus, submission on this count, is rejected.

In the light of the aforesaid observations, since the compensation, so worked upon by the Tribunal, has been scaled down from Rs.22,95,000/- to Rs.21,78,380/-, therefore, the present appeal is partly allowed, with the abovesaid reduction in the compensation, so worked upon. However, the compensation so granted to respondents No.2 to 4, who are children of deceased, shall remain to the same extent i.e. Rs.4 lakh per claimant. The reduction so made, shall be from the amount of compensation, so awarded to respondent No.1-Mange Ram, husband of the deceased. The remaining terms of the Award, shall remain same, as held by the Tribunal.

November 22, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No