IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision :2.9.2022

FAO No. 8787 of 2014 (O&M)

RAMA PREETI AND OTHERS

…Appellants

Versus

SUKHWINDER @ SUKHWINDER SINGH AND OTHERS

….Respondents

FAO No. 181 of 2015 (O&M)

SHRI RAM GENERAL INSURANCE COMPANY LIMITED

…Appellant

Versus

RAMA PREETI AND OTHERS

….Respondents

Coram : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Harsh Aggarwal, Advocate for the appellants-claimants.

Mr. R.K.Bansal, Advocate for
Mr. N.P.Gupta, Advocate
for respondent No. 2 in FAO-8787 of 2014
for respondent No. 6 in FAO-181 of 2015

Mr. Rajbir Singh, Advocate
for the appellant in FAO-181 of 2015
for respondent No. 3 in FAO-8787 of 2014

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JAGMOHAN BANSAL, J.

By this common order, two appeals bearing FAO No. 8787 of 2014 and F.A.O. No. 181 of 2015 which are arising from same incident and award dated 14.03.2014 passed by learned Motor Accident Claims Tribunal (Fast Track Court), Hoshiarpur (for short "Tribunal") whereby learned Tribunal has awarded a sum of Rs. 41,23,630/-

alongwith interest @ 6% per annum, are hereby decided. The appellants/claimants have filed appeal seeking enhancement of compensation whereas Shri Ram General Insurance Company Limited (for the sake of convenience hereinafter called as “Respondent”) has filed appeal raising question of negligence and quantum of compensation.

2. The brief facts emerging from record and arguments of both sides are that on 30.5.2012, Prem Pardeep (deceased) was driving a car bearing No. PB-07X-0089 which met with an accident with truck bearing No. PB-06N-2666 which was coming from opposite side. Prem Pardeep was admitted in hospital where he died after 20 days. The dependants of deceased filed claim under Section 166 of the Motor Vehicles Act, 1988 and learned Tribunal after considering issues involved and arguments of both sides awarded a sum of Rs. 41,23,630/- alongwith interest as compensation.

3. Learned counsel for Respondent contended that it was a case of head on collision and learned Tribunal has wrongly fastened liability of accident on truck driver and accordingly awarded compensation. He is not disputing the fact that truck was involved in accident which stood insured by the Respondent Company, however, the learned Tribunal has wrongly held driver of the truck negligent and responsible for the accident whereas cross examination of eye witness and photographs of accident indicate that it was car driver who was at fault. On the question of quantum of compensation, he contended that learned Tribunal has rightly considered monthly income of deceased Rs. 30,000/-. The deceased in his income tax returns had declared income from other sources apart from income from business, thus, income from other

sources cannot be considered for the purpose of determination of income of the deceased. Learned Tribunal has rightly observed that minor son of the deceased is shortly going to be major, thus, he can run the business of his deceased father. The daughter of deceased is also competent to run the business and nothing is on record to show that deceased was having some special skill to run his business.

4. Per contra, learned counsel for the claimants-appellants contended that business of the deceased is lying closed and even otherwise, it is patently wrong to presume that minor son of deceased on becoming major can run the business. Income of deceased is considered to determine the compensation in monetary terms whereas loss of head of family cannot be compensated. The income tax returns are only source to determine compensation in monetary terms, thus, learned Tribunal travelling beyond settled law has calculated income on presumption basis whereas claimants had placed on record three returns of previous years which are undisputed. The returned income cannot be ignored and it is patently illegal to presume that family members can run the business. If business of a businessman can be run by any one, then, there is no question of failure of business and closure of units. Business is an art and output of long experience and efforts. Most of the businessmen are not professionally qualified or having special knowledge still everybody is not successful or fail.

On the question of head on collision, learned counsel pleaded that driver of the vehicle did not appear and submitted his version. The owner of the truck has pleaded that no accident took place and insurance company did not bring on record any evidence contrary to deposition of eye witness. The police registered FIR against driver and final police report was filed. The site plan prepared by police indicates that driver of truck was negligent and he was responsible for the accident. Thus, there is no contributory liability. Head on collision does not mean that there is contributory liability. In support of his contention, he relied upon judgment of Hon'ble Supreme Court in **Minu Rout and another vs. Satya Pradyumna Mohapatra and others 2014(1) SCC (Cri) 384.**

5. I have perused the record and heard arguments of both sides.

6. Learned Tribunal while passing impugned award framed following issues:-

1. Whether Prem Pardeep deceased died on account of rash and negligent driving of Truck Tipper bearing registration No. PB-06-N-2666 driven by respondent No. 1 Sukhwinder @ Sukhwinder Singh? OPP.
2. If issue No. 1 is proved, whether claimants are entitled to the grant of compensation? If so, how much and from whom? OPP.
3. Whether the petition is not maintainable? OPR-2.
4. Whether the driver of the Truck Tipper No. PB-06-N-2666 alleged to be involved in the accident was not holding valid driving licence at the time of alleged accident? OPR-3.
5. Whether the petition is bad for non-joinder or necessary party? OPR-3
6. Whether the offending vehicle was being plied without any valid fitness certificate and Route permit at the time of alleged accident? OPR-3.
7. Relief.

7. There is no dispute with respect to issue Nos. 3 to 7 and dispute is confined to issue Nos. 1 and 2.

8. Learned Tribunal has considered statement of Mohinder Partap Singh who was examined as eye witness (AW-4). An FIR No. 39 dated

1.6.2012 under Sections 279, 337, 338, 427 and 304-A IPC at Police Station Rawalpindi, District Kapurthala was registered against the driver of the truck. Police after completion of investigation, filed its report under Section 173 Cr.P.C. Learned Tribunal on the basis of documentary as well as oral evidence held that driver of offending truck was rash and negligent which resulted into death of Prem Pardeep.

As per contention of insurance company, there was head on collision and as per photographs of truck and car, it can be concluded that truck driver was not rash and negligent. The owner of the truck in his reply before the learned Tribunal pleaded that no accident had taken place. The driver of truck did not appear and none of the party examined him as a witness. An independent person who claimed to be eye witness filed his affidavit deposing that driver of the truck was rash and negligent which caused death of the deceased. The site plan does not indicate that truck driver was not negligent or driver of car was negligent. In the absence of any documentary or oral evidence led by insurance company or driver or owner of truck especially when eye witness has deposed otherwise, it cannot be held that driver of the car was negligent just because there was head on collision. The Hon'ble Supreme Court in **Minu Rout's case (supra)** while dealing with identical issue where FIR was registered against driver of car as well truck, has held:-

> "16. P.W.3 was a betel shop owner, whose shop is situated near the spot of the accident. Though he was not examined by the Investigating Officer in the police case he is examined before the Tribunal whose evidence is required to be accepted for the reason that the same is not rebutted by the respondents. P.W.4 has stated in his cross examination that he saw the accident from a little distance from the market place, where about 10 to 20 persons were present. He

has further deposed that the truck was in a high speed and the people traveling in the car sustained injuries and the driver of the car Susil Rout suffered grievous injuries and succumbed to the same. He was conscious when he was taken to the Jajpur Hospital on a trekker. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet-Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V. Act. The Insurance Company, though claimed permission under Section 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet-Exh.1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue no.1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is

> contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law. The Tribunal has accepted the part of oral evidence of the eye witnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet-Exh.1, which was filed against the driver of the offending truck and deceased to hold there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on issue No.1 by the Tribunal and affirmed by the High Court in the impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered point No.1 in favour of the appellants in so far as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned."

In view of the above cited judgment as well findings recorded by learned Tribunal, I do not find myself able to form an opinion contrary to opinion expressed by learned Tribunal, thus, findings recorded by learned Tribunal are upheld and appeal of insurance company on this issue stands dismissed.

9. Learned Tribunal has wrongly presumed income of deceased Rs. 30,000/- per month. Indubitably, the claimants have placed on record three previous years' income tax returns of deceased wherein income was duly disclosed. The pattern of income does not indicate manipulation and it is further important to note that accident took place on 30.5.2012 and income tax return for the year 2011-12 was filed much earlier to date of accident, thus, there is no reason to disbelieve the

return or income disclosed by deceased. I am of the considered opinion that income disclosed in the return should be considered as income for determination of compensation. The arguments of insurance company that income from other sources should not be considered, is without any basis and foundation, thus, deserves to be rejected. The findings of learned Tribunal that minor children of deceased can run business after attaining age of majority or deceased was not having any special knowledge of running business is without any substance and deserves to be outrightly rejected.

In view of above findings, the amount of compensation deserves to be determined in the light of judgments of Hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121** and **National Insurance Company vs. Pranay Sethi and others 2017 (16) SCC 680.**

Learned Tribunal has allowed benefit of future prospects @ 15% which should be 10% in view of above cited judgments. Learned Tribunal has applied multiplier of 9 whereas as per judgment in **Smt. Sarla Verma's case (supra)** it should be 11 because age of deceased was even though little more than 55 still it was less than 56 and as per my opinion, deceased should be considered in the bracket of 51-55 and not 56-60 years. There is no dispute between the parties on the question of compensation awarded under heading dependency, medical expenses, attendant charges, special diet, transportation, funeral expenses, loss of estate and consortium. Accordingly, compensation under different heads is determined as below:-

Under Head	**Amount**
Total taxable income as per last ITR	Rs.8,01,810/-
Tax paid	Rs.78,055/-

Income for determination of claim (Annual)	Rs. 7,23,755/-
Future prospects (10%)	Rs. 7,96,130/-
Multiplier of 11	Rs. 87,57,430/-
Income after deduction for personal expenses ($1/4^{th}$) (87,57,430-21,89,357)	Rs. 65,68,073/-
Loss of consortium (44000x4)	Rs.1,76,000/-
Loss of estate	Rs. 16,500/-
Funeral expenses	Rs. 16,500/-
Medical expenses	Rs. 2,72,630/-
Total	Rs. 70,49,703/-

The appellant is entitled to interest @ 6% per annum from the date of filing of claim petition till the date of actual payment. It is made clear that amount already paid would be deducted from claim determined hereinabove.

For the aforesaid reasons, the appeal filed by the insurance company (FAO-181 OF 2015) is disposed of and the appeal filed by Rama Preeti and others (FAO-8787 of 2014) is partly allowed in the aforesaid terms.

(JAGMOHAN BANSAL)
JUDGE

02.09.2022
PARAMJIT

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