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

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<u>FAO No. 6761 of 2016 (O & M) and</u>
<u>Date of decision : 15.11.2022</u>

United India Insurance Company Limited, Chandigarh ……...Appellant

Vs.

Ravinder Kaur and others ……Respondents

<u>2. FAO No. 243 of 2017(O & M)</u>

Ravinder Kaur and others ……...Appellant

Vs.

Rajveer Singh and others ……Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Ashwani Talwar, Advocate, for the appellant/
Insurance company (in FAO No. 6761 of 2016)

Mr. Jaideep Verma, Advocate, for the appellants
(in FAO No. 243 of 2017)
for respondents no. 1 to 7 (in FAO No. 6761 of 2016)

<u>TRIBHUVAN DAHIYA, J. (Oral)</u>

1. These two appeals are being decided together, one filed by the Insurance company and the other by the claimants against the award dated 22.8.2016 passed by the Motor Accident Claims Tribunal, Rupnagar (in short ‘the Tribunal’).

2. Facts in brief are, the accident in question took place on 28.6.2014 while the deceased Mandeep Singh was driving motor cycle bearing No. PB65-N-5425 and Arvinder Singh was the pillion rider. The motor cycle was hit by a

speeding Maruti car/offending vehicle bearing no. CH03-M-5247, leading to grievous injuries and fractures to both Mandeep Singh and Arvinder Singh. They were taken to Government Medical College and Hospital, Sector 32, Chandigarh (GMCH-32), and later referred to PGI, Chandigarh. Mandeep Singh succumbed to injuries in the PGI on 6.7.2014. The Tribunal held the accident to have been caused on account of rash and negligent driving of the offending vehicle by its driver-respondent no.8, and compensation of Rs.20,25,576/- with interest at the rate of 9% per annum was awarded to the claimants on account of the death of Mandeep Singh. The liability to pay the compensation was fastened on the Insurance company as well as owner and driver of the offending vehicle jointly and severally.

3. The Insurance company has come in appeal challenging the award on the ground that it is a case of false involvement of the offending vehicle in the accident. The fact of accident having been caused by the offending vehicle driven by its driver-respondent no.8 has not been established on record. Initially, it was reported to the police by Arvinder Singh on 28.6.2014 that the accident was caused by unknown vehicle, and registration number of the same was later on provided in supplementary statement. Besides, the Insurance company has also challenged the quantum of compensation awarded to the respondents/claimants on the ground that future prospects awarded at the rate of 50% of the assessed income were on higher side, and not in accordance with law.

4. *Per contra*, learned counsel for the respondents/claimants has argued that involvement of the vehicle has been duly established on record, and the accident has occurred on account of rash and negligent driving by respondent no. 8. Tribunal's findings to that effect are valid. He has further

argued that the compensation awarded to the claimants needs to be enhanced suitably. For assessing dependency 1/4th income has been wrongly deducted from the deceased's income; only 1/6th need to be deducted as the number of dependents was seven. Learned counsel has also stated that age of the deceased was 24 years at the time of accident, it was wrongly taken to be 26 years and the amount awarded under the conventional heads for loss of consortium, funeral expenses and loss of estate is also on the lower side.

5. A perusal of the award passed by the Tribunal establishes that a DDR No.17 dated 28.6.2014 was recorded regarding the accident in question which has been proved on record by HC Pargat Singh. Thereupon, FIR no. 219 dated 28.6.2014 under Sections 279, 337, 338, 304A, 427 IPC at Police Station Zirakpur was lodged against the driver-respondent no. 8 on account of the accident in question. He was charge-sheeted and report under Section 173 Cr.P.C. (Ex.P-2) was filed by the police. It has also been recorded that driver-respondent no. 8 in his testimony as RW-3 admitted that the offending vehicle was involved in the accident on 28.6.2014 at about 3:35 a.m. near Ambala Chandigarh Road. PW-3 Gurvinder Singh, the eye witness, has deposed that deceased Mandeep Singh and Arvinder Singh became unconscious after the accident. They had received multiple grievous injuries and were taken to hospital. Supplementary statements of Arvinder Singh and Gurvinder Singh were recorded on 7.7.2014 and number of Maruti car as well as name of the driver was mentioned. He has further stated that he accompanied the deceased to the GMCH-32, Chandigarh, and thereafter to the PGI. Owner of the offending vehicle-respondent no. 9 was not produced before the Court by the respondents in support of their case that the offending vehicle owned by him was not involved in the accident.

6. Apart from the fact that driver of the offending vehicle faced criminal prosecution after report under Section 173 Cr.P.C. was filed against him by the police, there is evidence of the eye witness Gurvinder Singh on record establishing the factum of accident coupled with admission of respondent no. 8-driver that the offending vehicle was involved in the accident on 28.6.2014 at about 3:35 a.m. near Ambala Chandigarh Road. There is, therefore, enough evidence on record that the accident occurred due to negligent driving of the offending vehicle by respondent no. 8.

7. The Tribunal's findings in that regard are based on preponderance of probabilities and no fault can be found about the same. Law on this aspect has been settled by the Supreme Court in ***Sunita and others vs. Rajasthan State Road Transport Corporation and another***, **(2020) 13 SCC 486**, that in a motor accident claim case, once the foundational fact, i.e., the actual occurrence of the accident has been established, the Tribunal's role after that would be to calculate the quantum of just compensation if accident had taken place due to negligence of the driver. While deciding the cases, the standard of proof to be borne in mind must be of 'preponderance of probability'. The relevant part of para No.25 of the judgment reads as under:

> 25. ….. It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal case.

8. So far as the respondents/claimants' appeal for enhancement of compensation is concerned, there is no credible evidence on record to establish that the deceased was 24 years of age as claimed by the claimants. His age has been rightly assessed based on the post-mortem report (Ex.P-5) where the deceased has been recorded to be 26 years at the time of death. The findings, therefore, cannot be disturbed.

9. It has been proved on record that the deceased was drawing gross monthly salary of Rs.8172/-per month and was working in a private company. There is no evidence on record that he was in permanent employment. Therefore, addition of 50% of assessed income towards future prospects awarded by the Tribunal is on higher side. As per law laid down by the Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others*** **2017 (4) RCR (Civil) 1009,** the claimants are entitled to an addition of 40% to deceased's assessed income towards future prospects he being in a private job.

10. Besides, the compensation assessed by the Tribunal under the conventional heads is not as per law laid down by the Supreme Court in **Pranay Sethi case** (*supra*). The amount of Rs. One lakh awarded towards loss of consortium is on the lower side. It has been held by the Supreme Court that reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively; and each of the claimant is entitled to consortium. The aforesaid amounts should be enhanced at the rate of 10% every three years. Therefore, the amount to which claimants are entitled under these heads comes to Rs.16,500/-, Rs.44,000/- and Rs.16,500/-respectively.

11. The findings regarding deduction of 1/4th from the deceased's

income to assess the dependency is also wrong. The Tribunal has held based upon the testimony of PW-Ravinder Kaur, that the deceased was maintaining minor child, old parents and three unmarried sisters. As per law laid down by the Supreme Court in ***Sarla Verma v. Delhi Transport Corporation;*** **2009 (3) RCR (Civil) 77**,the number of dependents being seven, 1/6th of the deceased's income was required to be deducted to assess the dependency. Therefore, the claimants are held entitled to assessment of dependency by deducting 1/6th of the deceased's income towards personal and living expenses, instead of 1/4th.

12. Accordingly, the appellants/claimants become entitled to the following amount of compensation:

Sr. No.	**Head**	**Compensation awarded by this Court**
1	Annual income (8172 x 12)	98,064
2	Future prospects @ 40% of annual income	39,226
3	Total income including future prospects	1,37,290
4	After deduction @ 1/6th towards personal expenses	1,14,408 (1,37,290 – 22,882)
5	Multiplier (17) 1,14,408 x 17	19,44,936
6	Loss of estate	16,500
7	Loss of consortium (44,000 x 7)	3,08,000
8	Funeral expenses	16,500
9	Total amount of compensation	22,85,936/-

13. The award passed by the Tribunal dated 22.8.2016, therefore, stands modified and respondent/claimants are held entitled to compensation of an amount of Rs.22,85,936/-with interest at the rate of 9% per annum, from the date of filing the claim petition till its actual realization. The liability to satisfy the award, share of the claimants, and the procedure of disbursal shall be as already determined by the Tribunal.

14. Accordingly, the Insurance company's appeal is dismissed and the appeal filed by the claimants is disposed of in the afore stated terms.

15. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

16. A photocopy of this order be placed on the file of the connected case.

(TRIBHUVAN DAHIYA)
JUDGE

15.11.2022
Ashwani

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