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

Decided on : 24.08.2022

FAO-3891-2017 (O&M)

New India Insurance Co. Ltd. ...... Appellant

Versus

Parmila Devi and others ...... Respondents

FAO-5771-2017 (O&M)

Parmila Devi and others ...... Appellant

Versus

Raj Bahadur Singh Thakur and others ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. P.S.Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the appellant in FAO No.3891 of 2017 and
for respondent No.3 in FAO No.5771 of 2017.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate
for the claimants-appellants in FAO No.5771 of 2017 and
for respondents No.1 to 4 in FAO No.3891 of 2017.

Mr. P.K.S.Phoolka, Advocate
for the owner/driver in FAO No.3891 of 2017 and
for respondents No.1 and 2 in FAO No.5771 of 2017

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Manjari Nehru Kaul, J.(Oral)

This order shall dispose of two appeals i.e. FAO No.3891 and 5771 of 2017 as both have been filed against the same award dated 21.02.2017 passed by the Motor Accident Claims Tribunal, Rupnagar. Brief facts of the case are taken from FAO No.3891 of 2017.

Insurance Company is in appeal before this Court to impugn the award dated 21.02.2017 passed by Motor Accident Claims Tribunal, Rupnagar (hereinafter called as 'the Tribunal') in claim petition filed under Section 166 of Motor Vehicles Act, wherein the following compensation was assessed and awarded to the claimants on account of death of Naresh Kumar (hereinafter referred to as 'deceased') in an accident, which took place on 28.02.2015:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.9,000/-
2	Future prospects (30%)	Rs.2,700/-
3	Annual income (Rs.9,000 + Rs.2,700 x 12)	Rs.1,40,400/-
4	Deduction towards personal expenses (¼)	Rs.35,100/-
5	Annual dependency (Rs.1,40,400 – Rs.35,100)	Rs.1,05,300/-
6	Multiplier	14
7	Total dependency (Rs.1,05,300 x 14)	Rs.14,74,200/-
8	Loss of consortium	Rs.1,00,000/-
9	Loss of love and affection	Rs.1,00,000/-
10	Transportation and funeral expenses	Rs.50,000/-
	Total compensation	Rs.17,24,200/-

The Tribunal held that the claimants were entitled to receive compensation along with interest @ 9% p.a. In equal shares from the date of filing of the petition till its realization, which was to be paid jointly and severally by respondents.

Learned counsel for the appellant-Insurance Company has impugned the award passed by the Tribunal on the following grounds :

(i) that the involvement of the truck bearing registration No.PB-03-AJ-0966 (hereinafter referred to as 'offending vehicle') in the accident in question was highly suspect;

(ii) that the compensation awarded to the claimants was on the higher side and not in consonance with the settled ratio of law in ***Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270 and Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333.***

Learned counsel for the Insurance Company has vehemently argued that the Tribunal failed to appreciate that after the accident in question, FIR was lodged against the driver of an unknown truck. It was only after six months of the accident that the offending vehicle was involved in the accident in question. Learned counsel has submitted that the report filed under Section 173 Cr.PC also was completely silent qua the registration number, model, make and name of the driver of the offending vehicle. Hence, all these circumstances should have been appreciated in the light of the fact that though the accident in question was allegedly witnessed by PW-1 Dharampal and PW-3 Khushal Singh, still strangely, while registering the FIR, none of these eye-witnesses even gave the registration number of the offending vehicle. Learned counsel has further submitted that PW-1 Dharampal had in his cross-examination in fact conceded that he came to know about the registration number of the offending vehicle after 11 months of the alleged accident and that too from Ghanauli Police Station. Learned counsel still further submits that even PW-3 Khushal Singh had deposed on similar lines that registration number of the vehicle had been disclosed to him by the police. It has also been argued that the driver of the offending vehicle earned an acquittal in the case FIR, which was registered with respect to the accident in question. It has thus, been submitted that in the above-mentioned facts and circumstances, the Tribunal gravely erred in holding that not only was the offending vehicle involved in the accident in question, but also in fastening the liability of compensation upon the Insurance Company and the driver and owner of the offending vehicle jointly and severally.

Learned counsel for the appellant-Insurance Company has also challenged the amount of compensation awarded to the claimants-respondents by submitting that the Tribunal had erred in awarding Rs.1 lakh each for loss of consortium and loss of love and affection and Rs.50,000/- for transportation and funeral expenses, which on the face of it, was not only exorbitant but against the ratio of law laid down by Hon'ble Supreme Court in *Pranay Sethi's case(supra)*.

Per contra, learned counsel for the claimants while opposing the prayer and submissions made by the learned counsel for the Insurance Company qua the involvement of the offending vehicle in the accident in question being suspect has vehemently argued that on 28.02.2015 at about 7.00 am when deceased was going on his motorcycle bearing registration No.PB-12-U-5731, he was being followed by PW-1 Dharampal on another motorcycle. The offending vehicle came in a rash and negligent manner and collided with the motorcycle of the deceased as a result of which he fell on the road, received multiple grievous injuries and died at the spot itself. The driver of the offending vehicle came to the spot, however, on seeing that the deceased had died, fled away along with his truck. Learned counsel has submitted that PW-1 Dharmapal while stepping into the witness box deposed in no uncertain terms that the offending vehicle was being driven in a rash and negligent manner and it was on account of the same that the deceased was killed. It has still further been submitted that merely because the name of the driver of the offending vehicle or its make or model was not mentioned in the FIR in question, it would not lead to an inference qua false implication of the offending vehicle. He has furthermore submitted that during investigation on the basis of Ex.P-11 (record of Asian Concrete and Cement, Baddi) the involvement of the offending vehicle came to light in the accident in question. He submits that as per the record Ex.P-11, the offending vehicle along with its driver had not only come and thereafter exited from the above-mentioned premises at Baddi but also travelled on the same road and spot at about the same time of the accident in question. It has further been submitted that merely because the driver of the offending vehicle had earned an acquittal in the criminal case registered against him, would not be of any avail to him, as in a criminal case the case is to be proved beyond reasonable doubt whereas the negligence of an offending vehicle in a claim petition under Motor Vehicles Act is to be proved on the touchstone of preponderance of probability. It has also been urged that the compensation awarded is meagre and be thus, modified and enhanced.

Heard learned counsel and perused the impugned award passed by the Tribunal.

This Court does not find any force in the submissions made by the learned counsel for the Insurance Company qua the involvement of the offending vehicle in the accident in question, being suspect. Both the eyewitnesses PW-1 Dharampal and PW-3 Khushal Singh in no uncertain terms gave a vivid account of the manner in which the offending vehicle struck against the motorcycle of the deceased. It may also be observed that neither driver nor the owner of the offending vehicle stepped into the witness box to refute the evidence led by the claimants qua the involvement of the offending vehicle in the accident in question. Hence, in the circumstances this Court has no hesitation in believing the version of the claimants including the eyewitnesses PW-1 Dharampal and Pw-3 Khushal Singh that the offending vehicle was indeed involved in the accident in question.

This Court however, finds merit in the next contention of learned counsel for the Insurance Company that the compensation was on the higher side and not in consonance with the settled law. The compensation under conventional heads including compensation towards loss of consortium to the widow of the deceased in the sum of Rs.1 lakh, admittedly is not in consonance with the settled law. However, at the same time it needs to be observed that no compensation has been granted to the children and mother of the deceased for loss of parental and filial consortium respectively. They are entitled to Rs.40,000/- each for loss of parental and filial consortium as per the settled law. Rs.1 lakh, which has been granted to the widow of the deceased towards loss of consortium, being not in consonance with the settled law, stands reduced to Rs.40,000/-. The claimants are entitled to only Rs.15,000/- each for loss of estate and funeral expenses. Since it has been held by the Hon'ble Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years, 10% enhancement qua the above-mentioned conventional heads would have to be made. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each for loss of estate & funeral expenses. Besides this, the claimants, who are widow and children and mother of the deceased, are entitled to Rs.44,000/- each, for loss of spousal, parental and filial consortium respectively.

Hence, this Court deems it fit to reassess and grant the following compensation to the appellants-claimants:

Sr. No.	***Head***	***Amount***
1	Monthly income	Rs.9,000/-
2	Future prospects (30%)	Rs.2,700/-
3	Annual income (Rs.9,000 + Rs.2,700 x 12)	Rs.1,40,400/-
4	Deduction towards personal expenses (¼)	Rs.35,100/-
5	Annual dependency (Rs.1,40,400 – Rs.35,100)	Rs.1,05,300/-
6	Multiplier	14
7	Total dependency (Rs.1,05,300 x 14)	Rs.14,74,200/-
8	Loss of consortium (Rs.44,000 x 4)	Rs.1,76,000/-
9	Loss of estate	Rs.16,500/-
10	Transportation and funeral expenses	Rs.16,500/-
	Total compensation	Rs.16,83,200/-

Claimants shall be entitled to interest @ 9% per annum from the date of filing of claim petition till its realization in the same ratio as ordered by the Tribunal vide its judgment dated 21.02.2017.

With the above observations, the instant appeals stand disposed of.

24.08.2022 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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