IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.247 of 2018
Date of Decision : 21.03.2022

Pankaj Kumar and Another ....Appellants

VERSUS

Oriental Insruance Co. Ltd. and Others ....Respondents

FAO No.2879 of 2015

Smt. Phulpati and Another ....Appellants

VERSUS

Pankaj Kumar and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gaurav Chopra, Sr. Advocate with
Mr. Vardaan Seth, Advocate
for the appellants in FAO-247-2018 and
for respondent nos.1 and 2 in FAO-2879-2015.

Mr. Ashwani Arora, Advocate
for the appellants in FAO-2879-2015 and
for respondent nos.2 and 3 in FAO-247-2018.

Mr. Satpal Dhamija, Advocate
for respondent no.3 in FAO-2879-2015 and
for respondent no.1 in FAO-247-2018.

ALKA SARIN, J.

Heard in physical mode.

CM-745-CII-2018 in FAO-247-2018

This is an application under Sections 5 and 14 of the Limitation Act, 1963 for condonation of delay of 1047 days in filing the present appeal.

For the reasons stated in the application, the same is allowed. The delay of 1047 days in filing the present appeal is condoned.

MAIN CASES

This common order shall dispose of the above-captioned two appeals. **FAO No.2879 of 2015** ***(Phulpati & Anr. vs. Pankaj Kumar & Ors.)*** has been preferred by the claimants while **FAO No.247 of 2018** ***(Pankaj Kumar & Anr. vs. Oriental Insurance Co. Ltd. & Ors.)*** has been preferred by the driver and owner of the offending vehicle against the award dated 25.11.2014 passed by the Motor Accident Claims Tribunal, SAS Nagar (Mohali).

In the later part of the judgment, the parties will be referred to as claimants, driver and owner of the offending vehicle and the Insurance Company for the sake of convenience.

The brief facts relevant to the present case are that on 14.07.2013 at about 07.30 p.m. Rajesh Kumar (deceased) was crossing the highway leading from Chandigarh to Ambala. When he reached near the divider, a car bearing registration no.HR-01-AE-3150 being driven in a rash and negligent manner by its driver hit the deceased as a result of which he received serious injuries and succumbed to the injuries on the way to G.M.C.H., Sector 32, Chandigarh where the doctor declared him as brought dead.

The claimants preferred a claim petition stating therein that the deceased was working as a Web Designer with Anjali Arts, Plot No.156, Phase-II, Industrial Area, Chandigarh and was drawing a salary of ₹18,000/- per month and therefore, claimants prayed for compensation to the tune of ₹50,00,000/-.

All the respondents appeared before the Tribunal. However, the driver and owner of the offending vehicle failed to file their written statements within a stipulated period and their defence was struck off vide order dated 06.01.2014. The Insurance Company in its written statement raised preliminary objections regarding the maintainability of the claim petition and alleged that the driver of the offending vehicle was not holding a valid and effective driving licence. On merits, the Insurance Company denied the involvement of the offending vehicle and pleaded that excessive compensation had been claimed by the claimants.

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

1. Whether respondent no.1 drove car bearing registration no.HR-01-AE-3150 in rash and negligent manner and struck against Rajesh Kumar deceased ?
2. Whether the claimants are entitled to compensation ? If so, at what rate, against whom ? OPP
3. Whether the petition is not maintainable ? OPR
4. Whether respondent no.1 was not holding a valid and effective driving licence ? OPR
5. Whether the car in question is being used against the terms and conditions of the insurance policy ? OPR
6. Whether the claimants have got no *locus standi* to file the present claim petition ? OPR
7. Relief.

On the basis of the pleadings of the parties and the evidence produced, the following compensation was awarded by the Tribunal :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	₹6500/-
2	Annual income of the deceased	(₹6500x12)= ₹78,000/-
3	Addition of 50% on ₹78000/- on account of future prospects	₹39000/-

4	Total income of the deceased	₹78000/- + ₹39000/- = ₹1,17,000/-
5.	Personal and living expenses (1/2)	(₹1,17,000/2)= ₹58,500/-
6.	Income after deduction of personal and living expenses	(₹1,17,000-₹58,500)= ₹58,500/-
7	Multiplier	18
8	Amount of compensation	(₹58,500x18)= ₹10,53,000/-
9	Funeral expenses	₹25000/-
	Grand Total	**₹10,78,000/-**

On issue no.4, it was held that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident. Hence, recovery rights were given to the Insurance Company.

FAO-247-2018

The present appeal has been filed by the driver and owner of the offending vehicle against the award dated 25.11.2014 passed by the Tribunal whereby recovery rights have been given to the Insurance Company. The only reason why recovery rights were given to the Insurance Company was that the driver of the offending vehicle was stated to be not holding a valid driving licence. It is noticed in the award as under :

> *"17. As far as liability is concerned, from Ex.R2 certified copy of the certificate of registration of the offending car bearing No.HR-01-AE-3150, it comes out to the surface that respondent no.2 Renu Khanna is recorded owner of the said offending car. From Ex.R3 certified copy of driving license of respondent no.1, it emerges out to the surface that respondent no.1 Pankaj Kumar is having driving license valid w.e.f. 21.07.2009 to 21.11.2012 only, whereas, the accident in the present case occurred on 14.07.2013, therefore, respondent no.1 was not holding valid and effective driving license at the*

> *time of accident i.e. on 14.07.2013. Though, the offending car bearing No.HR-01-AE-3150 was insured with respondent no.3 insurance company vide Ex.R1, attested copy of the motor insurance certificate cum policy schedule, from 17.04.2013 to 16.04.2014 thereby covering the period of accident. Therefore, liability of all the respondents to pay the awarded compensation amount is held to be joint and several, whereas, the first liability is that respondent no.3 insurance company with right to recover from respondent nos.1 and 2."*

Learned counsel for the appellants herein would contend that the driving licence held by the driver of the offending vehicle, which was produced on record as Ex.R3, had an endorsement which clearly stated that licence for LMV was valid w.e.f. 21.11.2012 to 21.07.2019 and hence at the time of the accident the driver was holding a valid driving license. During the pendency of the present appeal the Insurance Company had taken time to verify whether the driving licence held by the driver was a valid driving licence.

Today, Mr. Satpal Dhamija, Advocate, counsel for the Insurance Company, has placed on record the verification report prepared by Mr. Rakesh Gupta, Surveyors & Loss Assessors, Khajjar Raod, Sultanpur, District Chamba (HP) wherein it has been clearly stated that the driving licence issued by RLA Dalhousie was found to be genuine. Copy of the report of the Registering and Licencing Authority, Dalhousie, District Chamba (HP) has also been handed over in Court wherein also it has been stated that the said licence was a genuine licence. Both the said documents are taken on record as 'Mark C1 and C2'.

In view of the above and especially in view of the fact that both Mr. Rakesh Gupta, Surveyors & Loss Assessors and the Registering and Licencing Authority, Dalhousie, District Chamba have given reports that the driving licence held by the driver of the offending vehicle was a valid licence, learned counsel for the Insurance Company has fairly conceded that the appeal would have to be allowed.

In view of the above, the present appeal stands allowed and the finding on issue no.4 stands set aside.

FAO-2879-2015

The present appeal has been preferred by the claimants challenging the quantum of compensation awarded to them by the Tribunal.

Learned counsel for the claimants would contend that the claimants have led sufficient evidence, oral as well as documentary, in order to show that the deceased was drawing a salary of ₹10,000/- per month. A copy of the Middle Standard Examination Certificate of the deceased and copy of the Matriculation Certificate of the deceased as well as copy of the Senior Secondary Examination Certificate of the deceased were exhibited as Ex.P-4, P-5 and P-6 respectively. A copy of the certificate issued by Duke Infosys to the deceased was exhibited as Ex.P-9. It is further the contention that the salary certificate of the deceased was proved on the record as Ex.P-15 and the copy of the salary vouchers were proved on the record as Ex.P-16 to Ex. P-20. Copy of the attendance register of the deceased was also proved on record as Ex.P-21 to Ex.P-25. Learned counsel for the claimants has further contended that the Tribunal disbelieved the said documents only on the ground that no appointment letter had been issued in favour of the deceased at the time of his joining the firm as also on the ground that PW-3

Amit Kumar had stated that he did not know the nature of job of the deceased. Learned counsel for the claimants would further contend that at the time of exhibition of the documents by the claimants no objections were raised by the respondents.

The next argument raised by the learned counsel for the claimants is that no amount has been awarded towards consortium as per the judgment of the Supreme Court in the case of ***Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors.*** ***[2018 (18) SCC 130]***. He has further relied upon judgment by Hon'ble Supreme Court in ***N. Jayasree & Ors. vs. Cholamandalam MS General Insurance Company Ltd.*** ***[2021 (4) RCR (Civil) 642]*** to contend that the claimants would be entitled to a 10% increase on the amounts under the conventional heads as laid down in the case of ***National Insurance Company Ltd. vs. Pranay Sethi & Ors.*** ***[(2017) 16 Supreme Court Cases 680]***.

Per contra, learned counsel appearing on behalf of the Insurance Company has stated that the compensation awarded by the Tribunal is sufficient and there is no scope for further enhancement. It has further been contended that PW-2, Ashwani Kumar, who was Accountant in the office of M/s Anjali Arts, could not tell whether the deceased was a skilled or unskilled or semi-skilled worker and further that there was no appointment letter which was issued to the deceased at the time of his joining the firm and, hence, it could not be believed that the deceased was earning Rs.10,000/- per month. Learned counsel has further contended that the future prospects, keeping in view the age of the deceased, ought to have been calculated @ 40% while the Tribunal has granted the future prospects @ 50%.

I have heard learned counsel for the parties.

In the present case the deceased, who was 25 years of age, had been working with M/s Anjali Arts and in order to prove that the deceased had been working as a Graphic Designer, salary certificate of the deceased was produced as Ex.P-15. The said document was produced by PW-2 the accountant from the office of M/s Anjali Arts. No objection was raised to the exhibition of the said document. Further, the copy of the salary vouchers of the deceased were produced as Ex.P-16 to Ex.P-20 and copy of the attendance register of the deceased were produced as Ex.P-21 to Ex.P-25. No evidence was produced by the respondents to the contrary or to show that the said documents were fabricated. No reason has been given by the Tribunal for not relying on the said documents. The documents Ex.P-15 to Ex.P-25 were duly proved and there is no reason to doubt the authenticity of the said documents. Hence, income of the deceased ought to have been assessed as ₹10,000/- per month.

Further, the Tribunal has erred in granting an addition of 50% towards future prospects. As per the law laid down in the case of ***Pranay Sethi*** *(supra),* keeping in view the age of the deceased, an addition of 40% towards future prospects ought to have been made. No amount has been granted towards Filial consortium to the claimants who are the parents of the deceased as per the law laid down in ***Magma General Insurance Company Ltd.*** *(supra).* Further, as per the law laid down in ***Pranay Sethi's*** case *(supra)*, which is reiterated in ***N. Jayasree's*** case *(supra)*, the claimants would also be entitled to 10% increase under the conventional heads.

In view of the above, the following compensation is allowed to the claimants :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	₹10000/-
2	Annual income	(₹10000x12) = ₹120000/- per annum
3	Monthly income after deduction @ 50% towards personal expenses	(₹120000-₹60000) = ₹60000/- per annum
4	Future Prospects @ 40%	(₹60000+₹24000) = ₹84000/-
5	Multiplier '18'	₹84000x18 = ₹15,12,000/-
6	Loss of Estate	₹16500/-
7	Funeral Expenses	₹16500/-
8	Loss of Consortium (i) Father and Mother	(₹44,000x2) = ₹88000/-
	Total Compensation	**₹1633000/-**

The amount in excess over what has already been awarded by the Tribunal shall also attract interest @ 9% from the date of the award till the realization of the entire amount. The amount shall be apportioned between the claimants as directed by the Tribunal.

In view of the above discussion, both the above-captioned appeals are allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

21st March, 2022
jk

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO