IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-904-2017 (O&M)
Decided on : 19.07.2022

Reliance General Insurance Co. Ltd.

. . . Appellant(s)

Versus

Kamlesh and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Sanjeev Kodan, Advocate
for the appellant(s)-Insurance Company.

Mr. Dheeraj Narula, Advocate
for respondents No.1 to 4/claimants.

Respondent No.5 proceeded against *ex-parte* vide order dated 30.05.2019.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the Insurance Company to impugn the award dated 11.01.2017 passed by the learned MACT, Sirsa (hereinafter referred to as 'the Tribunal'), in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, filed by the claimants/respondents No.1 to 4. The Tribunal awarded the following compensation to the claimants/respondents No.1 to 4:-

2. The Tribunal assessed and awarded the compensation in the following terms:

Sr. No.	***Heads of claim***	***Awarded by Tribunal (in Rs.)***	***Total***
1.	Income	Rs.6500/-	
2.	Add % of income	50%	Rs.9750/- p.m.
3.	Multiplier by 12 (annual income)	9750 x 12 = Rs.1,17,000/-	
4.	Deduction	1/4th	29,250/-

5.	Multiplier	16	87,750 x 16
6.	Funeral Expenses	25,000/-	
7.	Loss of Love and Affection	25,000/-	
8.	Consortium	1,00,000/-	
	Total:	Rs.15,54,000/-	

3. The appellant-Insurance Company along with respondent No.5 (driver & owner of the offending truck bearing registration No. JK-02-AD/7027) were held jointly and severally liable to pay the aforementioned compensation to the claimants/respondents No.1 to 4.

4. As per the pleaded case of the claimants/respondents No.1 to 4 before the Tribunal, the deceased Puran Chand on 06.10.2014 was returning from Sirsa to his village Gigorani on motorcycle bearing registration No. HR-99-NWT/6980 with Sandeep. The deceased was riding his motorcycle on his correct left side at a moderate speed. At about 11:00 P.M., truck bearing registration No.JK-02-AD/7027 (hereinafter referred to as 'the offending vehicle'), came in a rash and negligent manner, being driven by respondent No.5, and hit the motorcycle of the deceased from the rear. Resultantly, deceased received serious and multiple injuries on his person and died at the spot. Pillion rider Sandeep too received injuries on his person. On the next day, FIR No. 388, dated 07.10.2014, u/s 279/337/304-A of IPC, at Police Station Sadar Sirsa, was registered against respondent No.5, on the statement of Sandeep.

5. The appellant-Insurance Company has challenged the impugned award primarily on the following two grounds:-

I. That the compensation awarded was exorbitant and not in consonance with the ratio of law as laid down **in**

National Insurance Co. Vs. Pranay Sethi, 2017 SCC 270 and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR (Civil) 333*** etc. in as much as 50% was awarded vide impugned award towards future expenses. Even under the conventional heads the compensation awarded required to be scaled down.

II. That the offending vehicle was plying without a valid permit and hence, there had been a violation of the terms & conditions of the insurance policy. The appellant-Insurance Company was thus not liable to pay any compensation.

6. *Per contra*, learned counsel for the claimants/respondents No.1 to 4, has controverted the submissions made by the appellant-Insurance Company that the compensation awarded was on the higher side and contrary to the settled law. Learned counsel has submitted that the deceased was 35 years of age on the date of accident and was working as a Mason. His income had been rightly assessed as Rs.6500/- p.m., which did not warrant any interference. He has further submitted that the claimants/respondents No.1 to 4, were the widow and three minor children of the deceased Puran Chand, but they were inadequately compensated qua loss of spousal and parental consortium. He has thus prayed that the compensation awarded be maintained and not interfered with.

7. Before proceeding further, it would be relevant to observe here that though respondent No.5 (owner & driver of the offending vehicle) was duly served, however, he did not put in an appearance, as a result of which,

vide order dated 30th May, 2019, of this Court, he was ordered to be proceeded against *ex-parte*.

8. I have heard learned counsel for the parties and perused the material on record.

9. This Court concurs with the submissions made by the learned counsel for the appellant-Insurance Company that the Tribunal erred in adding 50% towards future prospects. The deceased was 35 years old and a Mason. Hence, as per the settled law, only 40% should have been added towards future prospects. The compensation awarded thus, requires to be re-assessed and modified accordingly.

10. No doubt, the compensation awarded under loss of estate and funeral expenses is on the higher side but at the same time the claimants who are 3 minor children of the deceased have not been adequately compensated for loss of filial consortium. The compensation awarded to the widow in the sum of Rs.1 lakh at the same time is also not in consonance with the settled law. The compensation awarded thus requires to be reassessed and modified accordingly as per ***Pranay Sethi's case*** *(supra)* as follows:-

Sr. No.	Head	Amount
1.	Monthly Income	Rs.6500/-
2.	Annual Income	12x6500=Rs.78,000/-
3.	Future Prospects (40%)	Rs.78,000 x 40% = Rs.31,200/-
4.	Total Annual Income	Rs.1,09,200/-
5.	Deduction towards personal expenses (¼)	Rs.27,300/-
6.	Annual Dependency	Rs.81,900/-
7.	Multiplier	16
8.	Total Dependency	Rs.81,900 x 16 = Rs.13,10,400/-

9.	Spousal Consortium to wife	Rs.44,000/-
10.	Parental consortium to three minor children	Rs.1,32,000/- (i.e.Rs.44,000/- each)
11.	Funeral Expenses	Rs.16,500/- (10% enhancement as per **Pranay Sethi's case** (supra) every 3 years)
12.	Loss of Estate	Rs.16,500/- (10% enhancement as per **Pranay Sethi's case** (supra) every 3 years)
13.	Total Compensation	Rs.15,19,400/-

11. The appellants-claimants are therefore, held entitled to a total of Rs.15,19,400/- as compensation along with interest @ 8% per annum from the date of filing of petition till its actual realization.

12. This Court concurs with the submissions made by the learned counsel for the appellant-Insurance Company that since the offending vehicle was plying in the State of Haryana without a valid permit, as it had route permit to only ply in the State of Jammu & Kashmir hence, the appellant-Insurance Company could not be held liable to indemnify the insured. The Tribunal gravely erred in fastening liability on the Insurance Company without appreciating that no evidence, whatsoever, had been led by respondent No.5 (owner & driver of the offending vehicle) to place on record any route permit for the State of Haryana. RW-2/ Yugan Siwach, categorically deposed that the certified copy of the route permit of the offending vehicle, Ex.HA was valid only within the State of Jammu & Kashmir. No evidence to the contrary was led by respondent No.5, rather, it is his conceded case that the offending vehicle did not have the requisite route permit to ply the offending vehicle in the State of Haryana, where the accident in question took place. Once the offending vehicle did not have the permit to ply outside the State of Jammu & Kashmir, there can be no

manner of doubt that there indeed had been a violation of the insurance policy. The Hon'ble Supreme Court in ***Amrit Paul Singh & Anr. Vs. TATA AIG General Insurance Co. Ld. & Ors., 2018(3) RCR(C) 131***, has categorically held that in case a vehicle is plied in a public place without the requisite permit, it would be a fundamental statutory infraction and the onus would not be cast on the insurer in such a situation. This Court, therefore, has no hesitation in holding that the appellant-Insurance Company be exonerated from any liability and would not be, thus, liable to indemnify the insured. However, this Court deems it appropriate to direct the appellant-Insurance Company to satisfy the claim of the claimants/respondents No.1 to 4 at the first instance and thereafter, recover the same from respondent No.5 (owner & driver of the offending vehicle).

13. With these modifications, the present appeal stands disposed of in above terms.

(MANJARI NEHRU KAUL)
JUDGE

July 19, 2022
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No