IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6134-2013 (O&M) and
XOBJC-123-CII-2014

Reserved on: 11.10.2022

Pronounced on: October 27, 2022

United India Insurance Company Ltd. …Appellant

Versus

Nisha and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.K. Bashamboo, Advocate for the appellant.
None for respondents No.1 to 4.
Respondents No.5 & 6 exparte.

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HARKESH MANUJA, J.

This order of mine shall dispose of an appeal filed at the instance of Insurance Company impugning the award dated 12.08.2013 passed by learned Motor Vehicle Accident Claims Tribunal, Gurugram (hereinafter referred to as "the Tribunal"). Further, this order shall also dispose of cross-objections filed at the instance of Claimants-Respondents No. 1 to 4 seeking enhancement of compensation.

For convenience, the facts are taken from FAO No. 6134 of 2013, filed at the instance of appellant-Insurance Company.

The facts, in brief, are that on 27.02.2012, when Kuldeep Sharma was coming from the place of duty to his home on his motorcycle and reached near GENPACT red light Gurugram- Faridabad Road, a Maruti car bearing registration no HR-35-A-4142 being driven by respondent no 5 herein, hit his motorcycle, as a result of which he sustained serious injuries on his body and died in Paras Hospital Gurugram.

On account of the death of Kuldeep Sharma, respondents No. 1 to 4 herein being dependents filed a claim petition before learned Tribunal at Gurugram. Learned Tribunal held that respondent No. 5 herein was rash and negligent while driving the offending vehicle and therefore awarded compensation in the following manner :-

Sr.No.	**Particulars**	**Amount (Rs.)**
1.	Loss of Dependency	Rs. 55,08,000/-
2.	Loss of consortium to widow	Rs. 1,00,000/-
3.	Loss of Estate	Rs.10,000/-
4.	Funeral Expenses	Rs. 25,000/-
5.	Transportation Charges	Rs. 10,000/-
	TOTAL COMPENSATION:	Rs.56,53,000/-

In the present appeal, the appellant Insurance Company has challenged the award dated 12.08.2013 and has disputed the factum of accident by the offending vehicle and further sought reduction of amount of compensation. On the other hand, claimants/ respondents no. 1 to 4 have filed cross objections praying for enhancement of the same.

Learned counsel for the appellant/Insurance Company submits that on the basis of material brought on record it was not sufficiently proved that the offending vehicle was involved in the accident. He further contends that the FIR was registered against an unknown vehicle and learned Tribunal while holding that accident was caused due to rash and negligent driving of the offending vehicle, made an error while relying upon the statement of alleged eye-witness PW-5 (Prem Kumar) whose testimony was otherwise not reliable as neither he informed about the accident to the police nor he has been arrayed as a witness in the criminal case and specifically in the circumstance that in his cross examination, PW-5 stated that accident had already taken place before he reached at the spot. With respect to quantum of compensation he contends that as deceased was Haryana Government employee and covered under the "Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules 2006" (hereinafter referred as 2006 Rules), the compensation awarded under the rules shall be deducted from the compensation awarded for loss of dependency. In this regard he placed reliance upon judgement of Hon'ble apex court in **"Reliance General Insurance Company Ltd. Vs. Shashi Sharma and others",** 206 AIR 2000 1165**.** He further submits that compensation under conventional heads is extremely on higher side and should be reduced.

On the other hand, there is no representation on behalf of claimants/ respondents No. 1 to 4.

Having heard the arguments advanced by learned counsel for the appellant and gone through the paper-book as well as the cross-objections filed at the instance of claimants/ respondents No.1 to 4 and records of the case herein, my discussion on merits is as below.

So far as the contention raised on behalf of the appellant/ Insurance Company regarding the non-involvement of the offending vehicle is concerned, I find no merit in the same. No doubt, FIR was registered against an unknown vehicle and no details of the offending vehicle were available in the FIR, but learned Tribunal rightly held that FIR is not encyclopedia of the entire events. As the offending vehicle ran away from the place of accident, the details of the offending vehicle might not be readily available when FIR in relation to an accident is being registered. However, from the testimony of Mukesh Kumar-PW3 (Court Ahlmad), it cannot be denied that after the investigation in FIR No. 28 dated 27.02.2012 registered after this accident, the charge-sheet was filed against respondent No. 5 herein on 19.01.2013 and respondent No.1 therein was put on trial in this case. It is not uncommon that a case of hit and run is registered at first instance and later the investigating agency finds out the particulars of offending vehicle during investigation, the same cannot be doubted once carried out in official discharge of their statutory duties unless it is rebutted or any fraud or collusion is alleged & established.

In the present facts, neither complete particulars of fraud or collusion are made part of pleadings; nor proved on record. In fact, the claimants/Cross objectors have duly discharged their burden to prove the factum of accident involving the offending vehicle, however, the appellant/Insurance Company has failed to rebut the same when onus shifted upon it. It was observed by the Hon'ble Apex Court in **Dulcina Fernandes and others Vs. Joaquim Xavier Cruz and another**, reported as 2013 (10) SCR 480 that these facts are fundamental in deciding the claim petition. Relevant extract of para 8 of the same is extracted hereunder for reference:-

> *"8. ……However, there are certain other features of the case which are more fundamental and, therefore, have to be specifically noticed. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the*

> *accident and that after investigation he was charge-sheeted and sent up for trial. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prime facie, materials showing negligence were found to put him on trial……"*

Even the testimony of eye witness PW5 Prem Kumar is also categoric to the effect that the accident occurred due to the rash and negligent driving of respondent No. 5 herein. Merely because he has not been included in the list of witnesses by the prosecution, it cannot be a ground to discard his testimony since the responsibility of the same lies on prosecution and the credibility of PW5 cannot be doubted on this basis. It is nowhere controverted by the appellant and respondent Nos. 5 & 6 herein in their written statement that this witness was known or familiar with the claimants or had any personal grudge towards the appellant and respondent Nos. 5 & 6 herein to implicate them in this case, rather in his testimony, suggestion to this effect has been categorically denied by him.

Regarding argument raised by the appellant/ Insurance Company that the eye-witness PW-5 was not even present at the site of accident when the alleged accident occurred, in my considered opinion, learned Tribunal rightly held that the statement of PW-5 is required to be seen in its entirety and only a part of the statement cannot be segregated to conclude that he was not present at the place of accident when the accident occurred. Learned Tribunal has rightly explained that though he stated that accident has already occurred before he reached at the place of accident, it might be due to some distance between his motorcycle and actual place of accident and in later part he has categorically denied suggestion that he had not witnessed any such accident or he was not present at the spot. In relation to other arguments raised by the learned counsel for the appellant/ Insurance Company that neither this eye-witness PW-5 was mentioned in the claim petition, nor the FIR was registered on his complaint, in this context, this Court cannot lose sight of fact that the settled proposition of law in claim petitions is that the standard of proof beyond reasonable doubt could not apply and the evidence available has to be tested on the touchstone of preponderance of probabilities and reliance in this regard can be placed on judgment of Hon'ble Supreme Court on **Bimla Devi and others Vs. Himachal Road Transport Corporation and others**, 2009 (3) RCR (Civil) 805.

Therefore, in my considered opinion, learned Tribunal rightly held that accident has occurred due to the rash and negligent driving of the offending vehicle by respondent No 5 herein.

With respect to the arguments raised by the learned counsel for the appellant/ Insurance Company regarding the deduction of compensation amount received in view of 2006 Rules, in view of **"Shashi Sharma"** (supra), it cannot be denied that the compensation/ pecuniary assistance received by the claimants of the deceased under 2006 Rules, has to be deducted from the compensation awarded under the Motor Vehicle Act,1988 as the authorities relied upon by the learned Tribunal has been overruled in this case. The relevant part of the aforementioned judgment is reproduced as below :-

> *"The harmonious approach for determining a just compensation payable under the Act of 1998, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee*

> *under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowance" that was last drawn by the deceased Government employee in the normal course".*

To determine the amount to be deducted in view of 2006 Rules, it would be apposite to have a look at the relevant part of Rule 5 of 2006 Rules:

> "*5.(1) On the death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim.,- for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty- five years…..;*
> *(5) House Rent Allowance shall not be a part of allowance for the purposes of calculation of assistance."*

Salary certificate of the deceased has been brought on rocord as Ex-P3, which has been duly corroborated by the testimony of PW1, Ramesh Chand, Assistant-1, Office of Block Education Officer, therefore the salary of deceased is being taken as Rs.24,125/- which included HRA of Rs.1350/- . Age of the deceased at the time of accident has come on record to be 27-28 years, therefore in view of the aforesaid Rule 5(1), claimants/ cross-objectors would be getting same amount of salary (minus HRA) for 15 years, hence a sum of Rs.22,775 X 12 X 15 = Rs 40,99,500 /- is liable to be deducted from the compensation awarded by the learned Tribunal.

Besides this, with respect to the compensation awarded under the other conventional heads, applying the principles of law laid down by

Hon'ble Supreme Court in **"National Insurance Company Limited Vs. Pranay Sethi and Others",** reported as 2017(4) R.C.R CIVIL 100**,** the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses besides loss of consortium (parental, spousal and filial) to be awarded to the tune of Rs.44,000/- x 4 (Rs.1,76,000/-) and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads. No evidence has been brought on record regarding expenses incurred on account of "Transportation Charges", therefore amount awarded under this head is being deducted from the amount of compensation already awarded by learned Tribunal.

No other argument has been raised.

Thus, in view of the discussions made hereinabove, the claimants/ respondents No.1 to 4 herein are entitled for following compensation, as detailed in the table given hereunder :-

Sr.No.	**Particulars**	**Amount (Rs.)**
1.	Loss of Dependency (Rs.55,08,000–Rs.40,99,500)	Rs. 14,08,500/-
2.	Loss of consortium	Rs. 1,76,000/-
3.	Loss of Estate	Rs.16,500/-
4.	Funeral Expenses	Rs. 16,500/-
	TOTAL COMPENSATION:	Rs.16,17,500/-

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **"Smt. Supe Dei and others Vs. National Insurance Company Limited and other"**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **"Puttamma and others Vs.**

K.L. Narayana Reddy and another", 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the enhanced compensation.

The present appeal as well as the X-objections are disposed of in the manner indicated hereinabove.

Pending application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

October 27, 2022
sanjay

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