IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-8491-2017(O&M)

The Oriental Insurance Company Ltd.

...Appellant

Versus

Raj Rani and others

...Respondents

(2) FAO-2005-2018(O&M)

Raj Rani and others

...Appellants

Versus

Karanbir and others

...Respondents

(3) FAO-3042-2018(O&M)

Karanbir Singh

...Appellant

Versus

Raj Rani and others

...Respondents

Date of Decision:-29.11.2022

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.C. Gupta, Advocate
for the appellant in FAO-8491-2017.

Ms.Ekta Thakur, Advocate
for the appellants in FAO-2005-2018 and
for respondents No.1 to 4 in FAO-8491-2017.

None for the appellant in FAO-3042-2018 and
respondent No.1 in FAO-2005-2018.

None for respondent No.3 in FAO-3042-2018 and FAO-8491-2018.

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H.S. MADAAN, J.

1. By this order, I shall dispose of three FAOs i.e. FAO-8491-2017 filed on behalf of the Oriental Insurance Company Ltd., FAO-2005-2018 filed on behalf of claimants Raj Rani and others and FAO-3042-2018 filed on behalf of driver – Karanbir Singh, which have arisen out of the same accident.

2. Briefly stated, facts of the case are that on account of unfortunate demise of Satbir in a motor vehicular accident, which took place on 16.10.2016 statedly on account of rash and negligent driving of motorcycle bearing registration No.CH21-T-6059 (hereinafter referred to as the offending motorcycle) by respondent No.1 Karanbir Singh, the LRs of the deceased, namely, his wife – Raj Rani, aged 48 years, son – Sanju Kumar, aged 30 years, daughter - Shavnam aged 21 years and minor son – Sumit aged 16 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against Karanbir Singh – driver, Ms.Geeta – owner and Oriental Insurance Company Ltd., Chandigarh – insurer of the offending motorcycle in question before Motor Accidents Claims Tribunal, Chandigarh (hereinafter referred to as the Tribunal).

3. As per the case of the claimants, on 16.10.2016 Satbir was proceeding from Iron Market Chowk towards Sector 30, Chandigarh riding motorcycle bearing registration No.CH03-Z-8477; at about 7:55

a.m., when he had reached near light point of Sector 29-30, Chandigarh, then the offending motorcycle driven in a rash and negligent manner by respondent No.1 Karanbir Singh came from the side of Sector 29, Chandigarh and after jumping the red light signal, struck against the motorcycle being driven by Satbir; as a result, both the riders of the motorcycles fell down and suffered injuries; they were shifted to Government Medical College & Hospital, Sector 32, Chandigarh for treatment. However, on 17.10.2016 Satbir succumbed to the injuries suffered by him in the accident.

4. As per the version of the claimants, the deceased was aged about 51 years and was working as a Sweeper at Haryana MLA Hostel, Sector 3, Chandigarh, getting salary of Rs.28,000/- per month. The claimants were dependent upon his earnings and with his death, they had been deprived of the financial support being provided by the deceased, as such they are entitled to get compensation of Rs.70 lakhs.

5. On notice, the respondents appeared and filed separate written statements. In the written statement submitted by respondent No.1, he had taken preliminary objections that the motorcycle was neither being used nor driven by respondent No.1; as a matter of fact it was being used by his real brother, namely, Bikramjeet Singh; the claimant had filed the claim petition in collusion with respondents No.2 and 3 and respondent No.1 has been wrongly involved to get a fake claim. On merits, such respondent denied the assertions in the claim petition while praying for its dismissal.

6. In the written statement submitted on behalf of respondent No.2, she had denied that any such accident as alleged by the claimants had taken place involving motorcycle owned by her. Denying her liability to pay any compensation, she prayed for dismissal of the claim petition.

7. Respondent No.3 insurance company in the written statement filed by it also offered a vehement contest to the claim petition denying the accident in question contending that respondent No.1 was not having a legal and valid driving licence at the time of accident and a wrong FIR had been lodged against him. The insurance company also craved for dismissal of the claim petition.

8. No rejoinder was filed by the claimants. From the pleadings of the parties, following issues were framed:

1. *Whether deceased Satbir died as a result of injuries suffered in a motor vehicular accident which was caused due to rash and negligent driving of vehicle No.CH21-T-6059, which was being driven by respondent No.1? OPP.*
2. *Whether claimants are entitled to compensation on account of death of deceased Satbir in a motor vehicular accident, if so, to what extent and from whom? OPP.*
3. *Whether respondent No.1 was not having a valid driving licence at the time of accident? OPR.*
4. *Relief.*

9. The parties were afforded adequate opportunities to lead

evidence in support of their respective claims.

10. During the course of evidence of the claimants, claimant No.2 Sanju Kumar got his statement recorded as PW1 and repeated on oath the case of the claimants as contained in the claim petition. The claimants further examined Bir Singh, Work Supervisor, Office of Sub Divisional Engineer, Provincial Sub Division No.1, PWD(B&R), Chandigarh as PW2 and Surender Sethi as PW3. The claimants proved in evidence copy of FIR registered with regard to the accident as Ex.P1, copy of postmortem report of deceased Satbir as Ex.P2, copy of authority letter as Ex.P2/A, photocopy of annual statement as Ex.PW2/B, photocopy of attendance register as Ex.P2/C and photocopy of insurance over note as Ex.P3.

11. In rebuttal, the respondent No.1 Karanbir Singh got his own statement recorded as RW1 and repeated on oath his case as given in the written statement. He produced in evidence photocopy of the driving licence of Bikramjit Singh Longia as Ex.RW-1 and photocopy of insurance policy of the offence vehicle as Ex.R1.

12. After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants and against the respondents holding that Satbir had died due to the injuries sustained by him in the accident caused by motorcycle bearing registration No.CH21-T-6059 being driven by respondent No.1 Karanbir Singh in a rash and negligent manner. While arriving at this conclusion, the Tribunal took into consideration the fact that respondent No.1 had been booked in the criminal case for causing

accident by his rash and negligent driving of the motorcycle vide FIR Ex.P1 and as per the medical opinion given in the postmortem report of deceased Satbir as Ex.P2, cause of death was due to the injuries suffered by him in the road side accident and further respondent No.1 Karanbir Singh appearing as RW1 in his cross examination had admitted that he was released on bail by the police in the case and motorcycle in question was got released on superdari by Mrs.Geeta. He further admitted that he was facing criminal trial before Juvenile Court with regard to the accident.

13. As regards issue No.2, the Tribunal found widow of deceased, namely, Smt.Raj Rani, claimant No.1 and his minor son Sumit aged 16 years entitled to get compensation. The compensation payable to them was worked out to Rs.2,53,816/-. The Tribunal had taken the age of deceased Satbir at the time of accident to be 52 years in view of his date of birth certificate mentioning the date as 1.2.1964 in the service record. It was considered that Satbir was getting the salary of Rs.28,816/- per month. PW2 Bir Singh, a witness examined by the claimants themselves had testified that full salary of Satbir deceased was being paid to his wife and it would continue till the date when Satbir would have retired as per rules of Haryana Government. Referring to the judgment passed by the Apex Court in Civil Appeal No.9654 of 2016 titled 'Reliance General Insurance Company Ltd. Versus Shashi Sharma & others', decided on 23.9.2016, the amount received by the claimants towards financial assistance was decided to be adjusted towards the compensation payable to them. Considering that Satbir Singh would have retired on 31.1.2024,

the total amount of financial assistance was worked out to Rs.28,816 x 98 months = Rs.28,23,968/-.

14. The Tribunal however found major son of deceased, namely, Sanju Kumar aged about 30 years and daughter - Shavnam aged about 21 years to be not entitled to get compensation.

15. Resultantly, the claim petition was allowed with costs by Motor Accidents Claims Tribunal, Chandigarh and compensation of Rs.2,53,816/- with interest @ 7% per annum from the date of the claim petition till realization besides costs of the petition was awarded to claimants No.1 and 4. It was observed that any amount received by claimant Nos.1 and 4 on account of no fault liability would be reduced out of the said compensation amount, however, it shall be the liability of respondent No.3 insurance company to make the payment of compensation to the claimants No.1 and 4 at the first instance and thereafter, it would be at liberty to recover the same from the driver and insured of the offending motorcycle.

16. Feeling aggrieved by such award, the insurance company, driver of the offending motorcycle and the claimants have filed separate appeals before this Court.

17. Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

18. I have heard learned counsel for the parties besides going through the record.

19. I find that though no fault can be found with the observations

by the Tribunal that claimant Sanju Kumar could not be taken to be dependent upon earnings of the deceased for the reason that he had attained majority but same cannot be said to be true with regard to claimant Shavnam, aged about 21 years, an unmarried daughter of the deceased. There is nothing on record to show that Shavnam is engaged in any avocation or has any source of income. Therefore, she should have been taken to be dependent family member of the deceased. As has been generally observed, an unmarried daughter of the age of 21 years is financially dependent upon her parents and rather father in most of the cases, for meeting her basis needs. Most girls in that age group are usually students and after completion of studies, they are to be married off by the parents bearing the necessary expenses. Therefore, observing that Shavnam was not entitled for compensation is not the correct view taken by the Tribunal. The Tribunal has however found Smt.Raj Rani – widow and Sumit minor son of the deceased to be dependent family members.

20. Nevertheless in view of the judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3)*** where deceased was married and number of dependent members is 2-3, deduction should be 1/3rd therefore, deduction towards personal and living expenses of the deceased would remain the same.

21. The Tribunal has however omitted to make any addition in the income of the deceased towards future prospects as is required to be done in terms of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***. In terms of that

judgment, where the deceased had a permanent job and was between the age of 50 to 60 years, then 15% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.33,138 (28816 + 4322).

22. The deduction of 1/3rd of the amount is to be made towards personal expenses in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra).*** Doing that the dependency of claimants comes out to Rs.22,092/-(33138 - 11046) per month, annual dependency comes out to Rs. 22,092 x 12 = Rs.2,65,104/-.

23. Multiplier of 11 had been properly used by the Tribunal. Doing that, the compensation comes out to be Rs.29,16,144/- (2,65,104 x 11).

24. The Tribunal has awarded a sum of Rs.1,00,000/- to the claimant No.1 Raj Rani widow of the deceased towards loss of consortium. Further, a sum of Rs.1,00,000/- was awarded to claimant No.4 Sumit minor son of the deceased towards loss of love and affection and further an amount of Rs.25,000/- on account of funeral expenses.

25. However, the legal position in that regard has been clarified in a judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under

the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded. It has been clarified that the amount should be enhanced on percentage basis in every three years. In that case the accident had taken place on 16.10.2016, about 6 years prior and making addition of 10% to such amounts under the head compensation on account of loss of consortium, claimants No.1, 2 and 3 are entitled to sum of Rs.44,000/- each. Doing that the compensation comes out to be Rs.30,81,144 (29,16,144+44000+44000+44000+16500+16500). After deducting the amount to be received by the claimants towards financial assistance from the department of the deceased, the amount of compensation to be paid to the claimants Raj Rani, Shavnam and Sumit comes out to Rs. 2,57,176 (30,81,144 – 2823968).

26. In that way, the enhanced amount comes to Rs.3,360/- (2,57,176 - 253816). The appellants/claimants No.1 to 3 shall be entitled to recover the enhanced amount with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions shall remain the same as given in the original award.

27. With such modification, the ***FAO-2005-2018*** filed by claimants is allowed partly.

28. Learned counsel for the insurance company has argued that since Karanbir Singh, who as per the case of the claimants was driving the motorcycle at the relevant time and who had caused the accident by his rash and negligent driving resulting in death of Satbir, was a minor below

age of 18 years, as such he could not possess a valid driving licence. Respondent No.2 Geeta owner of the motorcycle, which was insured with respondent No.3 had wrongly handed over that motorcycle to Karanbir Singh minor flouting terms and conditions of the insurance policy, therefore, the insurance company should be absolved of its liability, rather than the Tribunal directing the insurance company to make the payment to the claimants and thereafter recover the same from respondents No.1 and 2. Therefore, the award be amended accordingly.

29. However, learned counsel for the claimants has controverted such contention contending that the insurance company cannot be absolved totally though necessary protection has been granted to it by affording recovery rights to the insurance company by the Tribunal.

30. After hearing the rival contentions, I find that the Tribunal cannot be faulted for issuing necessary direction to the insurance company with which the offending motorcycle was insured at the relevant time, to make payment to the claimants at the first instance and then recover the amount from the owner and driver of the offending motorcycle. The Tribunal has taken into consideration various factors for issuing such direction including that driving licence of respondent No.1 has not been brought on record and rather driving licence of brother of respondent No.1 has been placed on file.

31. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as

to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

32. Therefore, I do not see any reason to interfere with such directions issued by the Tribunal in the impugned order.

33. In view of the above discussion, the ***FAO-3042-2018*** filed by appellant-driver Karanbir and ***FAO-8491-2017*** filed on behalf of the insurance company stand dismissed.

34. Since vide this order, the ***FAO-2005-2018*** filed by claimants is allowed partly and FAO-3042-2018 filed by appellant-driver Karanbir and FAO-8491-2017 filed on behalf of the insurance company stand dismissed, the miscellaneous applications, if any, pending in these FAOs stand disposed of accordingly.

29.11.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No