IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6727 of 2019 (O&M)
Date of decision: 21.10.2022.

United India Insurance Company Limited ..Appellant

Versus

Neeta Devi and others ..Respondents

XOBJC-39 of 2021

The United India Insurance Company Limited ..Appellant
Versus

Smt. Neeta Devi and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjiv Pabbi, Advocate, for the appellant.
Mr. Bhanu Chaudhary, Advocate, for the respondents.

ANIL KSHETARPAL, J(Oral)

1. The appeal and the cross-objection arising from a common award passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal'), have come up for the final disposal.

2. FAO No.6727 of 2019 has been filed by the Insurance Company, whereas the cross-objection No.39 of 2021 has been filed by the claimants. The correctness of the findings with respect to the accident, the involvement of the offending vehicle, is not in dispute. The accident took place on 10.07.2017, at about 6/6:30 PM between the Innova Car and the motorcycle of the deceased. Late Sh. Vijay Kumar lost his precious life in the automobile accident. The Tribunal has found that the claimants are entitled to a sum of Rs.19,31,440/- as compensation. The claim petition was filed by the widow, two minor children and the widowed mother of the deceased.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

4. On 23.09.2022, the learned counsel representing the Insurance

Company contended that no eye witness to prove the rash and negligent driving has been examined by the claimants and there is no evidence proving the involvement of the Innova Car bearing registration No.HR-56A-5094. Keeping in view the facts of the case, he was directed to produce the mechanical report of the Innova car prepared by the police before presenting the challan in the criminal case. It has come on the record that the driver of the Innova car was challaned by the Police for causing the accident and the Innova car was taken into the custody and mechanically inspected.

5. Today, Sh. Pabbi, the learned counsel for the appellant has produced a copy of the mechanical report prepared on 13.07.2017 by the mechanic (Head Constable Subhash Chander), perusal whereof shows that the Innova Car had suffered an extensive damage on the front bonnet and grill of the vehicle. There was damage to the front wheel, the tube and the rim had bent. The radiator of the vehicle had also damaged, due to which the engine was unable to start. Even the steering system of the Innova Car was not in the working condition. The accident took place on 10.07.2017, whereas the report of the mechanic is dated 13.07.2017. The Insurance Company has not produced any evidence to prove that the Innova Car was falsely involved in the case.

6. The claimants are the widow, two minor children and widowed mother of the deceased.

7. This Court has carefully read the deposition of Smt. Neeta Devi, widow of late Sh. Vijay Kumar.

8. The learned counsel representing the Insurance Company did not cross examine the witness on the issue of the false implication of the Innova Car. The claimant apart from examining herself has examined Sh.

Devender, A criminal Ahlmad from the Court of Additional Chief Judicial Magistrate, Jind, whereas Mr. Sanjay, the driver of the Innova Car is facing a criminal prosecution. Mr. Mahender Singh, Head Constable, the Investigating Officer of the criminal case has also been examined.

9. The learned counsel representing the Insurance Company did not give any suggestion to the Investigating Officer with regard to false implication of the Innova Car. The author of the FIR Sh. Churia has also appeared in evidence on behalf of the claimant. Hence, there is sufficient evidence to prove the involvement of the Innova Car in the accident in question.

10. The learned counsel representing the Insurance Company contends that the Court has erred while observing that the age of the deceased was 28 years on the basis of a post mortem report, though, it is the case of the claimant herself that her husband was 34 years of age at the time of accident. He submits that the Tribunal has erred in multiplying the yearly dependency with multiplier of 17 instead of the appropriate multiplier of 16.

11. On the other hand, the learned counsel representing the claimants contends that the Tribunal has erred in assessing the income of the deceased as an unskilled labourer @ Rs.8200/- per month. Though, it has come in evidence that the deceased was running a small shop of an electrician in the village. The deceased owned a motorcycle. He was supporting his widow and two minor children. Therefore, the income assessed by the Tribunal needs suitable modification/enhancement.

12. The learned counsel representing the claimants admits that as per the case of the claimants, the deceased was 34 years of age and not 28

years at the time of accident as assessed by the Tribunal.

13. On reading of the deposition of Smt. Neeta Devi, widow of the deceased, the deceased was returning to his native village Nijran, District Jind, on his motorcycle bearing registration No.HR-11A-8819 when the accident took place. She has deposed that the deceased was earning Rs.35,000/- per month as he was running a small shop of electric articles including the sale of inverter and its batteries. She also claims that the deceased was doing the agricultural work and was earning Rs.10,000 per month from the agricultural work as well as dairy farming.

14. On reading of the cross-examination, it is evident that she admitted that she does not have any proof of income. She admitted that though her husband was not a qualified technician but he had learnt the work of electrician in order to run a small shop.

15. These small shops are the part of the unorganized sector. In villages, people are self employed in the unorganized sector. From the reading of deposition of the deceased widow, it is evident that the learned counsel representing the Insurance Company failed to impeach her credibility.

16. The Tribunal has erred in equating shopkeeper/mechanic with an unskilled labour. It has come in evidence that the deceased had inherited 1½ acres of agricultural land from his father. The Court should have been a little considerate in assessing the income of the deceased.

17. Keeping in view the over all evidence, the income of the deceased is assessed @ Rs.15,000/- per month. On the account of personal expenses, there will be deduction of $1/4^{th}$ as the deceased has left behind two dependents. Accordingly, the monthly dependency is worked out @

Rs.11250/-. As per the case of the claimants, the deceased was 34 years of age at the time of an accident. Hence, the Tribunal has wrongly relied upon the post mortem report to hold that the deceased was 28 years of age. The appropriate multiplier of 16 should be applied. On account of future prospects, he will be entitled to addition in the income @ 40%. Apart from, that each claimant shall be entitled to loss of consortium of Rs.40,000/- each in view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** which has been reiterated by another Division Bench in ***New India Assurance Co. Ltd. vs. Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*** and by a three Judge Bench in ***United India Insurance Company Ltd. vs. Satinder Kaur @ Satwinder Kaur and others (2020) SCC Online 410.*** The claimants shall also be entitled to Rs.30,000/- towards funeral and loss of estate. The total amount comes to Rs.32,14,000/-.

18. Hence, the amount of compensation is re-worked as under:-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Monthly income assessed	Rs.8200-00	Rs.15,000-00
Add Future Prospects	Rs.11480-00	(40%) Rs.21,000(15000+6000)
Total Income per month -Deduction	Rs.8610/-	($1/4^{th}$) Rs.21,000-5250 =15750-00
Annual dependency	Rs.8610x12=1,03,320/-	Rs.15,750x12=1,89,000/-
Multiplier	Rs.1,03,320x17=17,56,440/-	Rs.1,89,000x16=30,24,000/-
Conventional Heads -Loss of estate -Funeral Expenses -Spousal, Filial and parental Consortium -Loss of love & affection	Rs.15,000 Rs.40,000x4=1,60,000/-	Rs.15,000/- Rs.15,000/- Rs.40,000x4=1,60,000/-
Total compensation	Rs.19,31,440/-	Rs.32,14,000/-

Compensation Awarded by the High Court :Rs. 32,14,000/-
(-) Compensation Awarded by the MACT :Rs. 19,31,440/-
Enhanced Compensation :Rs. 12,82,560/-

19. The claimant shall be entitled to the enhanced amount along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

20. All the pending miscellaneous applications, if any, are also disposed of.

October 21, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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