

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(i)

FAO-20-2019 (O&M)

The New India Assurance Company Limited

...Appellant

VERSUS

Beerma and others

...Respondents

(ii)

FAO-804-2019 (O&M)

Beerma and others

...Appellants

VERSUS

Gurmail Singh and others

...Respondents

Date of Decision: February 22, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vinod Gupta, Advocate
for the appellant (in FAO-20-2019) and
for respondent No.3 (in FAO-804-2019) .

Mr.Sandeep Verma, Advocate
for the appellants (in FAO-804-2019) and
for respondents No.1 to 4 (in FAO-20-2019).

ARCHANA PURI, J.

Challenge in the twin appeals is to the Award dated 08.08.2018 passed by learned Motor Accident Claims Tribunal, whereby, compensation was granted to the appellants-claimants, on account of death of Titu Singh, in a motor vehicular accident.

On appraisal of the evidence brought on record, vide impugned Award, compensation was granted to the appellants-claimants, to the extent

of Rs.18,84,400/- together with the interest component. Even, the liability of the respondents (in the claim petition) was held to be joint and several.

Feeling aggrieved with the findings recorded by learned Tribunal, qua the fact of accident and manner of its taking place of the same as well as the extent of compensation, the insurance company has filed appeal bearing FAO-20-2019. However, thereby seeking enhancement of the compensation, the appellants-claimants have filed the appeal bearing FAO-804-2019.

For the convenience of the discussion, the parties are referred as claimants and respondents, as making appearing before the Tribunal.

As per the version spelt out from the pleadings of the claim petition, on 03.10.2016, Titu Singh was coming back to his house, from his duty i.e. from Syndicate Office, on his Aactiva bearing registration No.CH-01AU-6018, along with one Butta Singh and the said Aactiva was being driven by Titu Singh, with proper care and caution, at a very slow speed. They were followed by Chand Singh and Keemat Singh, on their separate motorcycle. At about 10.10 p.m., when they reached near bridge, opposite Railway Station Rupnagar, in the meanwhile, a car bearing registration No.PB-12Z-4047, came from Kurali side and driver of the said car, while driving the car in a rash and negligent manner and without blowing horn, struck his car with the vehicle of Titu Singh, as a result whereof, Titu Singh as well as Butta Singh fell down on the road and they received multiple injuries, which proved fatal qua Titu Singh. FIR No.165 dated 04.10.2016 was registered at Police Station City Rupnagar, at the instance of Chand Singh.

Deceased Titu Singh was asserted to be working with the Syndicate Bus Service Private Limited as Cook and besides the same, he was also doing the business of cooking. The claimants are, widow, minor children and mother of deceased Titu Singh.

However, respondents in their reply, have refuted the claim of the claimants. Respondents No.1 and 2 namely Gurmail Singh and Darshan Singh had denied the accident and asserted about the claimants to have concocted a false story, in order to grab compensation. Thus, a prayer was made for dismissal of the claim petition. However, respondent No.3- Insurance Company had also denied fact of the accident and the manner of causing of the same, as such asserted. In fact, it has also taken the plea that driver of the car bearing registration No.PB-12Z-4047, was not holding a valid and effective driving licence, insurance policy and fitness certificate, at the time of accident. In fact, no accident had taken place with the vehicle in question and the claim petition has been filed just to get illegal compensation from the respondents.

At the very outset, it has been emphatically submitted by learned counsel for the claimants that fact of accident and manner of taking place of the same, stands amply established, from the evidence, brought on record. In fact, Beerma-claimant No.1 has categorically deposed about death of her husband, in a motor vehicular accident and various documents relating to the manner of causing of the accident, have also been brought on record. It is submitted that Buta Singh, who was accompanying the deceased, at the relevant time, has also been examined as PW-3 and another eye witness to the accident is Chand Singh, PW-2. Both of them have

categorically deposed about the accident to have been caused, on account of rashness and negligence, on the part of driver of the offending vehicle bearing registration No.PB-12Z-4047. The fact of accident, stands proved from the evidence, so coming on record. Furthermore, it is submitted earnings of the deceased have been erroneously taken to be Rs.9,000/- per month, even though, he was working as Cook with the Syndicate Bus Service. Besides the same, also it is submitted that addition is required to be made on account of future prospects, which is given amiss in the present case. Also, it is submitted that the compensation qua conventional heads, as worked upon by learned Tribunal needs enhancement, as per prevalent law.

On the contrary, learned counsel for the insurance company has assiduously resisted the claim of the claimants. In fact, it is submitted by learned counsel for the insurance company that fact of accident, as such, does not stand established. In fact, it was a hit and run case and thereafter, the vehicle, in question, was planted. The very fact of accident, having so taken place and involvement of vehicle in question, is rendered doubtful, from the evidence brought on record. Even, the identity of driver of the offending vehicle, does not stand established. In this regard, it is submitted by learned counsel for the insurance company that even though, it is the version of the claimants that offending vehicle was driven by respondent No.1-Gurmail Singh and challan has been presented against him, but however, learned Tribunal had given the finding that Darshar Singh, owner was driving the car, at the time of accident. As such, it is submitted that since question of identity of the driver is doubtful, therefore, the claimants are not entitled to any compensation. As such, a prayer has been made for

acceptance of the appeal filed by the insurance company and dismissal of the appeal, filed by the claimants.

In view of the submissions, so made, at the very outset, it is pertinent to mention that imputation of rashness and negligence, at the behest of respondent No.1-Gurmail Singh, stands established from the ample material coming on record. In this regard, it is pertinent to mention that Beerma, widow of the deceased, herself stepped into witness box as PW-1 and has categorically deposed about death of her husband, as asserted in the claim petition. Besides the same, also certified copy of the challan under Section 173 Cr.P.C. has been proved as Ex.PX, against the driver of the car bearing registration No.PB-12Z-4047, charge-sheet is Ex.P4, copy of FIR got registered at the instance of Chand Singh, an eye witness to the accident is Ex.P2 and copy of post-mortem report is Ex.P1. It is pertinent to mention that besides the widow, even, Chand Singh, who was following the deceased, on separate motorcycle as well as Buta Singh, who was other occupant of the ill-fated Aactiva, have categorically imputed rashness and negligence, on the part of Gurmail Singh, while driving the offending vehicle.

Keeping in view the aforesaid evidence, it is very significant to mention that respondent No.1-Gurmail Singh, who is alleged to be the driver of the offending vehicle, at the relevant time, has not stepped into witness box, who could have been the best person to depose about the involvement of his vehicle in the accident and the manner of taking place of the same, had chosen to remain away from the witness box. Not only this, even the owner of the offending vehicle i.e. Darshan Singh has also not

stepped into witness box to dispute about the fact of accident and manner of its taking place of the same and involvement of Gurmail Singh in the same.

It is pertinent to mention that the insurance company has asserted that the Tribunal had reached the conclusion about respondent No.1 (Gurmail Singh) to be not driving the vehicle. In this regard, reference has been made by learned counsel for the insurance company to paragraph No.14 of the impugned Award, which relates to finding on issues No.3 and 4. No doubt, in this paragraph, it is typed as respondent No.1 was not driving the vehicle abovesaid, but however, this line is not to be read in isolation. In fact, it has to be taken into consideration, with regard to other material evidence, as discussed in the Award. As already observed aforesaid, much evidence has come on record, to establish about Gurmail Singh to be facing trial, in a criminal case and also about the statement, so got recorded by the eye witness. Seemingly, the addition of word 'not' in the aforesaid line of paragraph No.14, appears to be a computer error. Thus, solely on this ground, the submission, so made by learned counsel for the insurance company, does not hold good.

As discussed above, from the evidence adduced, the fact of accident and imputation of rashness and negligence, on the part of respondent No.1-Gurmail Singh, while driving car bearing registration No.PB-12Z-4047, stands amply established and as such, finding is hereby affirmed.

Now, coming to the extent of compensation, payable to the claimant. FAO-804-2019 has been filed thereby seeking enhancement of the compensation. On appraisal of material coming forth, it is evident that

the compensation, so worked upon, required to be re-appraised. Although, it is the pleaded version of the claimants about the deceased to be earning Rs.35,000/- per month, but however, the same does not stand established. It is the version of the claimants that deceased was working as cook with the Syndicate Bus Service Private Limited and was also indulging in part-time business of cooking. So far as, avocation of cook, followed by the deceased is concerned, suffice to consider the testimony of PW-4 Sham Singh, Manager, Ambala Bus Syndicate, who has deposed about the deceased to be working as Cook, in their transport company and also he deposed that the deceased was getting salary of Rs.9000/- per month, plus diet and uniform. The copy of the record, regarding the salary of the deceased, for the month of September 2016 is Ex.PW4/A, copy of salary register is Ex.PW4/B and certificate of last pay is Ex.PW4/C. It is pertinent to mention that even though, the claimants assert about the deceased to be indulging in part-time business of cooking but no satisfactory evidence, relating to the same, as such, has come on record.

Thus, considering the material aforesaid, earnings of the deceased, as spelt out from the documents proved by PW-4, stands established to be Rs.9000/- per month. Therefore, on this count, learned Tribunal has rightly taken the income of the deceased to be Rs.9000/- per month. However, the compensation further requires re-appraisal, as addition on account of future prospects and conventional heads, are required to be made. The deduction, on account of personal expenses, keeping in view the number of dependents to be four, has been rightly taken to be 1/4th.

Thus, after making such deduction, the monthly income comes to be

Rs.9000-2250=Rs.6750/-.

As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, keeping in view the age of the deceased to be 34 years, addition on account of future prospects is to be made to the extent of 40%, which comes to Rs.2700/-. Thus, total earnings of the deceased comes to be Rs.9450/- and annual earnings comes to be Rs.9450x12=Rs.1,13,400/-.

Keeping in view the age of the deceased, the suitable multiplier as per *Sarla Verma's case (supra)* is '16', as so applied by the Tribunal. Therefore, by applying the suitable multiplier of '16', the loss of dependency is worked upon as Rs.1,13,400x16=Rs.18,14,400/-.

Besides the aforesaid, it is pertinent to mention that in *Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130* and *United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410*, it has been laid down by the Hon'ble Supreme Court that consortium is not limited to 'spousal consortium' and it also includes 'parental consortium' and 'filial consortium'. It was held that apart from spousal consortium, 'parental' and 'filial' consortium is also payable. Endorsing this view, in *The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

In *Pranay Sethi's case (supra)*, the extent of consortium which

should be paid is stated to be Rs.40,000/- to each of the claimant and for the loss of estate, it is Rs.15,000/- as well as for the funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, appellants-claimants, are entitled to compensation, on the count of 'loss of consortium' to the extent of Rs.44,000/- each. Besides the same, they are also entitled to Rs.16,500/- as loss of estate and Rs.16,500/- as funeral expenses.

Thus, loss of dependency comes to be Rs.18,14,400/-, loss of consortium comes to be Rs.1,76,000/- (Rs.44,000/- to each of the appellant), Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be Rs.20,23,400/-.

As such, the enhanced compensation, after the compensation awarded by the Tribunal comes to **Rs.20,23,400-18,84,400 =Rs.1,39,000/-**.

The apportionment and disbursement of the enhanced amount of compensation, shall be made amongst appellants, as ordered by learned Tribunal. The impugned Award dated 08.08.2018 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain same.

With the above observations, the appeal filed by the insurance company i.e. FAO-20-2019 stands dismissed whereas, appeal filed by the appellants-claimants i.e. FAO-804-2019 stands allowed.

February 22, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No