118
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1448-2023 (O&M)
Date of decision: March 28, 2023

The New India Assurance Company Limited
….Appellant
versus
Seema Rani and others
….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Raj Kumar Bashamboo, Advocate
for appellant-Insurance Company.

Mr. Ashit Malik, Advocate
for respondents No.1 to 5/caveators.

*****

ARUN MONGA, J. (ORAL)

CM-5513-CII-2023

For the reasons stated in application, same is allowed. Delay of 20 days in re-filing the appeal is condoned.

CM-5514-CII-2023

For the reasons stated in application, same is allowed, subject to all just exceptions.

Main case (O&M)

Appellant before this Court is Insurance Company seeking to set aside impugned award dated 15.10.2022 rendered by learned Motor Accident Claims Tribunal, Kurukshetra (for brevity, "Tribunal").

2. Succinct facts, as noted by learned Tribunal, are as below:

"*2. xx xx on fateful day i.e. on 17.07.2021 at about 12.30 p.m. Dharambir (since deceased) alognwith Rajesh Kumar son of Ramdiya, r/o village Haripra started from his Dairy at Kaithal for village Titram for collecting money from the customers. Rajesh Kumar was driving motor cycle bearing registration no.HR-08Y-2804 and Dharambir was sitting as pillion rider on the said motor cycle. They reached some ahead of Reliance Petrol Pump on Jind Road, Kaithal. Rakesh Kumar stopped the motor cycle on Kacha portion of* *the road and went to the nearby hotel for taking some goods; whereas Dharambir remaining sitting on the said motor cycle. After taking goods, Rakesh Kumar was coming back from the hotel. In the meantime, offending car bearing registration no.HR-90-A-5371 came from behind at very high speed and in rash and negligent manner, being driven by respondent no.1 Anil Kumar and struck the motor cycle. As a result, Dharambir fell down and received multiple serious and grievous injuries on various parts of his body. After accident, respondent no.1 stopped at some distance and came down but after sometime, he fled away from the spot alongwith offending car. The accident took place due to sole rash and negligent driving of the offending car by respondent no.1. Soon after accident, Dharambir was shifted to Government Hospital, Kaithal but due to serious condition referred to PGI, Chandigarh, where he was treated but succumbed to his injuries on 23.7.2021."*

3. Upon notice, respondents No.1 and 2 filed written statement raising legal objections regarding petition being not maintainable; cause of action; claimant estopped from filing petition by their own act and conduct. It was averred that no accident had taken place with offending vehicle and respondent No.1 (driver) was having a valid driving licence. On merits, all the material averments of the petition were denied. It was submitted that no such accident took place as alleged. It was further submitted that respondent No.1 had not caused any alleged accident, while driving said vehicle and a false FIR was registered by the police after due deliberation in collusion with the claimants. They were not liable to pay any compensation. Further averments of claim petition were denied and prayed for dismissal of the same with costs.

3.1 Appellant-Insurance Company filed written statement raising preliminary objections to the effect that petition was not maintainable; petition was bad for mis-joinder and non-joinder of parties; claimants had no cause of action to file and maintain the claim petition; and the offending vehicle was being plied in contravention of terms and conditions of insurance policy and respondent No.1 was not holding valid and effective driving license. On merits, all material averments were denied. It was averred that neither alleged vehicle was offending vehicle nor the same was being driven by its driver at the relevant time and place.

No accident of alleged vehicle had occurred at all at the alleged relevant time and place. It was denied that claimants were having any relationship with deceased. Prayer for dismissal of claim petition was made.

4. Learned Tribunal framed the following issues:

> "*1. Whether the accident in question, resulting into death of Dharambir, took place due to rash and negligent driving of vehicle bearing registration No.HR-90-A-5371, by respondent No.1? OPP*
> *2. Whether petitioners are entitled to compensation, if so, to what amount and from whom? OPP*
> *3. Whether there was violation of the terms and conditions of the insurance policy and respondent No.3 is not liable to pay any compensation? OPR-3*
> *4. Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 3 in favour of claimants. Consequently, claimants were held entitled to compensation of Rs.65,53,000/- along with interest @ 7.5% from the date of filing the petition till its realization and driver, owner and Insurance Company were held liable to pay the same jointly and severally.

6. Learned counsel for appellant-Insurance Company contends that in para-19 of the impugned award, learned Tribunal fell in error while assessing age of the deceased as 39 years based on date of birth recorded in his income tax returns as 23.03.1979. However, according to said date of birth, age of the deceased was 42 years on the date of accident i.e., 17.07.2021. He further contends that based on said factual error, learned Tribunal wrongly added future prospects @ 40% instead of 25% and further applied multiplier of 15 instead of 14.

7. On the other hand, while learned counsel for respondents No.1 to 5-claimants agrees to the aforesaid submissions of learned counsel for appellant-Insurance Company, but also contends that the amount awarded towards loss of filial and parental consortium should be enhanced as the same has been awarded on lower side. To this, learned counsel for appellant-Insurance Company also agrees.

8. This Court appreciates the mutual concession on each other's submissions and earnest effort made by both learned counsels to settle the matter amicably in view of Apex Court judgment rendered in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi,** reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**. Both learned counsels have jointly prepared revised computations, which are as below:-

Deceased	Dharambir
Date of accident/death	17.07.2021
Age	42 years
Marital Status	Married
Claimants	Widow, 2 minor daughters, 1 minor son, mother and father
Income of the deceased	Rs.33,333/- p.m.
Future prospects	25% (Rs.33,333+8,333) = Rs.41,666/-
Deduction in dependency for personal expenses	1/4th (41,666-10,416)=Rs.31,250/-
Annual dependency	Rs.3,75,000/- (31,250 x 12)
Total loss of dependency with Multiplier of 14	Rs.52,50,000/-
Loss of conjugal Consortium	Rs.44,000/-
Loss of Filial and parental consortium	Rs.2,20,000/-
Funeral expenses	Rs.16,500/-
Loss of estate	Rs.16,500/-
Total	Rs.55,47,000/- (52,5000/- + 44,000/- + Rs.2,20,000/- + Rs.16,500/- + Rs.16,500/-)
Compensation awarded by the Tribunal	Rs.65,53,000/-
Excess amount of compensation awarded	**Rs.10,06,000/-** (Rs.65,53,000-Rs.55,47,000/-)

9. Both learned counsels are *ad idem* that impugned award be modified in above terms. It is so ordered.

10. Accordingly, impugned award is modified in terms of above computations. Excess amount of compensation of Rs.10,06,000/-, if already paid shall be refundable by the claimants to the insurance company.

11. Appeal is disposed of.

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

(ARUN MONGA)
JUDGE

March 28, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No