IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1495-2019(O&M) WITH
XOBJC-50-C-2022 (O&M)
Date of decision: January 20, 2023

Sardar Singh

....Appellant

versus

Smt. Mithlesh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. R.S. Randhawa, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No.1 to 4-Cross-Objectors.

Mr. Rajesh Chaudhary, Advocate
for respondent No.5-Insurance Company.

None for respondent No.6.

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ARUN MONGA, J. (ORAL)

Appellant before this Court is the owner of offending vehicle seeking to set aside impugned award dated 18.12.2018 passed by learned Motor Accidents Claims Tribunal, Chandigarh (for short 'Tribunal).

2. Succinct facts as noted by the Tribunal are as below:

> "*Briefly, it has been averred in the present claim petition that on14.09.2016, at about 9:25PM, deceased Sipahi Lal @ Sipani Lalwas standing in front of SCF No.380, Motor Market, Manimajra, by the side of his rehri, on which he was selling eggs. In the meantime, a Mahindra Pick-up jeep No.CH01-TA-1258 came at fast speed from the side of Power House, Manimajra and struck against his rehri, due to which, deceased fell on the road and sustained serious injuries and was immediately taken to PGI, Chandigarh, where he was declared as brought dead. It is further averred that the above said vehicle was being driven in a rash and negligent manner, by Lalu Yadav (respondent No. 1). Infact,*

the deceased was 48 years of age at the time of accident and was a barber and used to sell eggs on rehri, thereby he was earning Rs.20,000/- per month. It is also alleged that all the claimants were solely dependent upon his income as he was the only bread earner of his family. Further, an amount of Rs.50,000/- was spent on funeral and last rites of the deceased. Therefore, the claimants have laid a claim of Rs.75.00 lakh on account of death of deceased, loss of estate, consortium, loss of love and affection etc."

3. Upon notice, respondent-driver denied the averments made in the claim petition on the ground that no accident took place and a false criminal case was registered against him. He prayed for dismissal of the claim petition.

3.1 Appellant herein (owner) filed separate written statement taking identical pleas as that of respondent-driver.

3.3 Respondent-Insurance Company filed written statement raising preliminary objections regarding cause of action, maintainability, jurisdiction. It was averred that deceased himself was negligent at the time of accident. Insurance Company was not liable for any compensation. It was further averred that respondent-driver was not in possession of valid and effective driving licence, fitness certificate and route permit at the time of alleged accident. On merits, it was averred that claimants be put to strict proof that deceased died due to alleged accidental injuries. Rest of the averments were denied. With these submissions, prayer for dismissal of claim petition was made.

4. Learned Tribunal framed the following issues:

"*1. Whether Sipahi Lal @ Sipani Lal died in motor vehicular accident which was caused due to rash and negligent driving of respondent No.1 while driving Mahindra Pick-up bearing registration No.CH01-TA-1258?OPA*

2. *Whether the claimants are entitled to compensation on account of death of Sipahi Lal @ Sipäni Lal? If so, from whom and to which extent? OPA*
3. *Whether the driver of offending vehicle was not holding any effective and valid driving licence at the time of accident? OPR*
4. *Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1, 2 & 3 in favour of claimants. Consequently, claimants were held entitled to receive compensation of Rs.11,59,566/- (with 50% to claimant No.1 (widow) and 25% each to claimants No.2 and 3 (minor children) along with interest@ 9% per annum from the date of filing of petition till actual realization. Amount of claimants No.2 and 3 was ordered to be deposited in Fixed Deposit Scheme and they were held entitled to withdraw the same on attaining the age of majority. Claimant No.1 (widow/mother) was held entitled to receive periodical interest on the said amount and it was ordered that she shall spend the same only on proper up-keep and maintenance of minor children. Further, it was ordered that respondent-Insurance Company though not liable to pay amount of compensation, but it shall satisfy the Award and shall have a right to recover the amount deposited by it along with interest from the owner/driver of the vehicle.

6. It is contended on behalf of the appellant-owner of offending vehicle that learned Tribunal relied upon the Local Commissioner's report, but since Local Commissioner was not examined as a witness, said report could not be read in evidence. Report of Local Commissioner is legal evidence under Order 26 Rule 10 of Civil Procedure Code, 1908, but the Court or with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the

matters in his report or as to the manner in which he has made the investigation.

7. Having heard arguments of learned counsel for the parties and after perusal of the award impugned herein rendered by the learned Tribunal, the conceded position that emerges is that the entire basis of rendering findings *qua* the licence being fake was Local Commissioner report dated 08.10.2018, who was appointed under Order 26 Rule 9 of Code of Civil Procedure, 1908 for assistance of the Court to take a view on the authenticity of the licence. Local Commissioner not only gave his report dated 08.10.2018 after evidence had been concluded and the matter was fixed for arguments, but even otherwise, at that stage, the Tribunal ought to have used its discretion to fix the matter for granting opportunity to the driver/ owner to cross-examine the said Local Commissioner for proving the contents of his report and facing cross-examination about the same. No such opportunity was granted and without proving the Local Commissioner's report, same was admitted as a piece of evidence which resulted in seriously prejudicing the owner as well as driver of the offending vehicle.

7.1 In this context, reference may be had to judgment rendered by Bombay High Court in **Khurshed Banoo w/o Murtaza Hasan (deceased by LRs) versus Vasant Mallikarjun Manthalkar (deceased by LRs)**, reported in**2003 AIR (Bombay) 52**, relevant of which is extracted herein below:

> "*15. The trial Court in the present case has proceeded to decree the suit essentially relying on the Commissioner's report and on the assumption that the said report has been proved. For assuming that the said report has been proved, the trial Court perhaps took note of the fact that defendant did not raise any objection with reference to the Commissioner's report. Merely because no objection was raised by the defendant to the*

> *Commissioner's report that does not mean that the report stands proved on record. There is established procedure known to law by which the Commissioner's report can be proved on evidence. That has not been done in the present case. In such a situation, the trial Court could not have decided the suit on merits. For, in absence of any oral evidence or for that matter evidence by way of affidavit of any party, the issues as framed cannot be decided as having been established one way or the other. In the circumstances, there is palpable and manifest material irregularity committed by the trial Court in the conduct of the trial in the present case. Indubitably, this would warrant exercise of powers under Section 99 read with Order 41, Rule 23A of the Code so as to remand the case to the trial Court for a denovo trial."*

8. Agreeing with the aforesaid view taken by the Bombay High Court, matter is remanded back to learned Tribunal concerned for limited extent of granting opportunity only to appellant (owner) **[appellant-respondent No.1 (driver) was ex parte before learned Tribunal)** to file his objection to the Local Commissioner's report dated 08.10.2018. He and the insurance company shall be granted opportunity to examine said Local Commissioner after which the learned Tribunal will take a fresh decision *qua* the insurance company's entitlement to recover the compensation amount from owner of the offending vehicle.

9. Vide an order of even date, cross-objections filed by respondents No.1 to 4 (claimants) are being partly allowed and to that extent, compensation determined by the Tribunal would also stand modified.

<u>XOBJC-C-50-2022</u>

These are cross-objection filed by respondents No.1 to 4 seeking enhancement of compensation awarded by learned Tribunal..

2. Learned counsel appearing on behalf of respondents No.1 to 4 (applicants-claimants herein) submits that compensation awarded by the

Tribunal on account of loss of consortium, loss of estate and funeral expenses need to be enhanced. He further submits that instead of deduction of 1/3rd of the income assessed by the Tribunal, deduction of 1/4th needs to be applied. In support of his averments, he relies on Apex Court judgment rendered in **National Insurance Co. Ltd. v. Pranay Sethi,** reported in**(2017) 16 SCC 680**.

3. After applying the principles in the case of **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**, amount of compensation is recalculated as below:

Deceased	Sipahi Lal @ Sipani Lal
Date of accident/death	14.09.2016
Age	47 years
Claimants	4 (Wife, two minor daughters and one married daughter)
Monthly income of the deceased	Rs.8,458/-
Future prospects @ 25%	Rs.10,572/- (Rs.8,458/- + Rs.2,114/-)
Income after deduction in dependency 1/4th	Rs.95,418/- (Annual Income) (Rs.10,572/- - Rs.2,643/- x 12)
Multiplier@ 13	Rs.12,36,924/- (Rs.95,418x 13)
Consortium	Rs.1,76,000/- (Rs.44,000 (each) x 4)
Loss of Estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs.14,45,924/- (Rs.12,36,924 + Rs.1,76,000 + Rs.16,500 + Rs.16,500)
Compensation awarded by the Tribunal	Rs.11,69,566/-
Enhanced amount of	Rs.2,76,358/-

compensation	(Rs.14,45,924/- - Rs.11,69,566/-)

4. Accordingly, the impugned award is modified in terms of the above computations. Revised compensation shall be payable to the claimants along with interest as already imposed by the learned Tribunal, from the date of filing of the claim petition till the actual date of payment. The same shall be payable initially by the insurance company to the claimants within a period of 2 months of their approaching the insurance company along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the claim petition. Revised compensation amount be disbursed to the claimants in terms of the apportionment as already determined by the Tribunal.

5. In the premise, **FAO-1495-2019** stands disposed of and **XOBJC-5-2022** stands partly allowed, in the above terms

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

(ARUN MONGA)
JUDGE

January 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No