IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215-1 **FAO No.1755 of 2012 (O&M)**
Date of Decision : 27.02.2023

New India Assurance Co. Ltd. ....Appellant

VERSUS

Urminder Kaur and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.C. Gupta, Advocate for the appellant.

Mr. N.K. Vadhera, Advocate for respondent Nos.1 to 5.

Mr. K.S. Khehar, Advocate for respondent Nos.6 and 7.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the Insurance Company against the award dated 11.01.2012 passed by the Motor Accident Claims Tribunal, Gurdaspur, on the ground that the present was a case of contributory negligence and hence the Tribunal erred in holding otherwise.

The brief facts relevant to the present *lis* are that Jasbir Singh (hereinafter referred to as the 'deceased') was going on a motorcycle on 12.04.2010 at 05.00 a.m. rider of which was Prithpal Singh. They were going to village Chhote Ghuman and when they reached a petrol pump in the area of Dhariwal, a truck bearing No.PB-02AX-7887 (hereinafter referred to as the 'offending vehicle') was found parked on the road without any indicator. The motorcycle of the deceased struck against the offending vehicle due to the strong light of the vehicles coming from the opposite side. Both the deceased and Prithpal Singh suffered injuries and eventually succumbed to the same. The accident was witnessed by one Surinder Singh. It was averred in the claim petition, which was filed by the widow, minor daughter, parents and brother of the deceased, that the deceased was working as 'Ragi' in a Gurudwara and his monthly salary was Rs.12,000/-. The driver and the owner of the offending vehicle filed a joint written statement averring therein that it was due to the negligence of Prithpal Singh, rider of the motorcycle, that the accident had occurred. The appellant-Insurance Company filed a separate written statement stating that the driver of the offending vehicle did not have a valid driving licence.

From the pleadings of the parties, the following issues were framed :

1. Whether Jasbir died in an accident on 12.04.2010, caused due to rash and negligent driving of truck tralla by respondent No.1 ? OPA
2. To what amount the claimants are entitled by way of compensation and from whom ? OPP
3. Whether respondent No.1 was not holding a valid driving licence at the time of accident ? OPR-3
4. Whether the offending vehicle was being driven in contravention of the terms and condition of the insurance policy ? OPR-3
5. Relief.

The Tribunal on issue No.1 held that the accident took place due to negligence of the driver of the offending vehicle. The Tribunal awarded an amount of Rs.4,76,000/- towards compensation on the basis of income having been assessed as Rs.3500/- per month keeping in view the minimum wages in the absence of any evidence.

Learned counsel for the claimant-respondent Nos.1 to 5 on the other hand has contended that the driver of the offending vehicle did not step into the witness-box. No suggestion *qua* the fact that it was daylight and hence the question of being blinded by the headlights of the oncoming vehicle did not arise was put to the eye-witness, AW2, in his cross-examination. Learned counsel for the claimant-respondent Nos.1 to 5 would further contend that the award in the present case is not in consonance with the judgments passed by the Hon'ble Supreme Court and hence the amount of compensation deserves to be enhanced. Learned counsel for claimant-respondent Nos.1 to 5 has relied upon an order passed by the Hon'ble Supreme Court in the case of **Surekha & Ors. vs. Santosh & Ors. [2021 (1) PLR 795]** to contend that even though no cross appeal was filed, the claimants would be entitled to enhanced compensation in terms of the law laid down by the Hon'ble Supreme Court.

I have heard learned counsel for the parties.

In the present case the Tribunal held that the offending vehicle was not parked in a proper manner resulting in the accident. The Tribunal further awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[3500 x 12] = Rs.42000
2	Annual dependency of the claimants after deduction of 1/3rd	[42000 - 14000] = Rs.28000
3	Multiplier of 17	[28000 x 17] = Rs.476000
	Total Compensation	**Rs.476000**

The argument raised by learned counsel for the appellant-Insurance Company that the present was a case of contributory negligence deserves to be rejected on the ground that the driver of the offending vehicle though filed his written statement but chose not to step into the witness-box. The driver would have been the best witness to depose, however, he chose to stay away from the proceedings after having filed his written statement. Further still, the eye-witness, Surinder Singh, stepped into the witness-box as AW2. A perusal of the statement of AW2 reveals that no suggestion was put to the said witness qua the fact that at 05.00 a.m. there was sufficient light and there was no question of the driver being blinded by the lights of the oncoming vehicles.

In view of the above, no illegality or infirmity can be found with the award passed by the Tribunal qua the negligence of the driver. The appeal of the Insurance Company is accordingly dismissed.

Hon'ble Supreme Court in the case of **Surekha** *(supra)* has held as under :

> *"3. By now, it is well-settled that in the matter of insurance claim compensation in reference to the motor accident, the court should not take hyper technical approach and ensure that just compensation is awarded to the affected person or the claimants."*

As per Order XLI Rule 33 of the Code of Civil Procedure, 1908, reproduced hereunder, even in the absence of a cross appeal an order can be passed in favour of the respondents.

> *"33. Power of Court of Appeal - The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees."*

In view of the order in the case of **Surekha** *(supra)*, the argument of the claimant-respondent Nos.1 to 5 is accepted and the compensation is modified. Income of the deceased as assessed by the Tribunal is maintained. Multiplier of 17 has rightly been applied by the Tribunal and deduction of $1/3^{rd}$ has also rightly been allowed as the claim was allowed only *qua* three of the claimants and dismissed *qua* the father and the brother of the deceased. Further, as per the law laid down by the Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [2009(6) SCC 121]** and **Magma General**

Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130], an addition of 40% is to be made towards the future prospects and the claimants would also be entitled to compensation under the conventional heads as well as towards loss of consortium. They are also entitled to 10% increase under the conventional heads as well as under the head consortium as per the law laid down in **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**. The father and the brother would also be entitled to compensation under the Filial Consortium @ Rs.44,000/- each, though the claim petition qua them has been dismissed. The modified compensation is re-worked out as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[3500 x 12] = Rs.42000
2	Annual dependency of the claimants after deduction of 1/3rd	[42000 - 14000] = Rs.28000
3	Future Prospects @ 40%	[28000 + 11200] = Rs.39200
4	Multiplier of 17	[39200 x 17] = Rs.666400
5	Loss of Consortium (iv) Parental (1 child) (v) Spousal (vi) Filial (parents and brother)	 Rs.44,000 Rs.44,000 Rs.132000 (44000 x 3) (Total Rs.220000)
6	Loss of Estate	Rs.16,500
7	Funeral Expenses	Rs.16,500
	Total Compensation	**Rs.919400**
	Amount Awarded by the Tribunal	**Rs.476000**
	Enhanced amount	**Rs.443400**

Keeping in view the fact that no cross appeal was filed and the plea of enhancement has been raised at this stage, the claimant-respondent Nos.1 to 5 would be entitled to interest @ 6% from the date of filing of the claim petition till the date of the award. Respondent nos.4 and 5, who are the father and brother of the deceased, are only entitled to the amount of compensation awarded under the Filial Consortium. The enhanced amount of compensation shall be apportioned between the claimant-respondent Nos.1 to 3 as directed by the Tribunal.

In view of the above discussion, the present appeal filed by the Insurance Company is dismissed. However, the award passed by the Tribunal is modified to the above extent and just compensation for the claimant-respondent Nos.1 to 5 is determined. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

27.02.2023
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO