IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5386-2019 (O&M) with
Cross-OBJ-63-2021
Reserved on:- 10.08.2023
Pronounced on:- 03.10.2023

HDFC ERGO General Insurance Co. Ltd.

....Appellant

Versus

Ram Rati and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ashish Bhagat, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Charanji Lal, Advocate
for respondents No. 1 and 2/Cross-objectors.

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AMARJOT BHATTI, J.

1. The appellant – HDFC ERGO General Insurance Co. Ltd. has filed the present appeal against impugned Award dated 19.03.2019 passed by learned Motor Accident Claims Tribunal, Kaithal vide which the respondents No.1 and 2/claimants alongwith proforma respondents have been awarded compensation of Rs. 7,71,800/- in equal shares along with interest @ 7.5% per annum from the date of the filing of claim petition till its realization, as detailed therein.

The respondents No.1 and 2/claimants have filed cross objection seeking enhancement of compensation along with interest till the realization of the amount.

2. The facts of the case are that Ram Rati, widow of late Sh. Bhalle Ram and Sukhdev, son of late Sh. Bhalle Ram filed the claim

petition under Section 166 of Motor Vehicles Act for grant of compensation on account of death of Bhalle Ram in a motor vehicular accident on 13.09.2018. Late Bhalle Ram was above 60 years of age at the time of accident. He was earning Rs. 20,000/- per month by doing agricultural work and running a dairy. As per the facts of the case, on 13.09.2018, Bhalle Ram (since deceased) and Sunil Kumar were riding their own motorcycles. After purchasing pesticides for his crop, Bhalle Ram on his motorcycle bearing Registration No. HR-08-W-5496 was returning to his village Kultaran from Kaithal. He had reached ahead of Bus Stand, Kaithal, when one Truck/Container bearing Registration No. HP-12-K-0602, being driven by respondent No. 1 in a rash and negligent manner, hit the motorcycle of Bhalle Ram, as a result he fell on the road and his head came under the front tyre of said truck and he died on the spot. The driver of said truck managed to flee from the spot. Regarding this accident, FIR No. 416 dated 13.09.2018 was registered under Section 279, 304-A I.P.C. against respondent No. 1 at Police Station Civil Lines, Kaithal. Hence, the claim petition.

3. Notice of claim petition was given to the respondents. The respondents No. 1 and 2 appeared and filed their joint written statement. They submitted that the offending vehicle was insured with respondent No. 3 and the alleged accident occurred due to negligence of deceased Bhalle Ram. It was alleged that late Bhalle Ram himself struck against the stationary Truck and a false F.I.R. was lodged against respondent No. 1. The remaining averments made in the petition were also denied in the written statement and prayer was made for the dismissal of claim petition.

4. The Insurance Company also filed written statement raising

objection that the terms and conditions of the insurance policy were violated and respondent No. 1 was not holding a valid and effective driving license. The offending vehicle was not involved in the alleged accident. The remaining averments on merits in the petition were also denied in the written statement. There was a prayer for dismissal of claim petition.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 20.12.2018 :-

> *(1) Whether the accident in question on 13.09.2018, at about 10:00 a.m. slightly ahead of Bus Stand Kaithal, under the jurisdiction of Police Station Civil Lines, Kaithal, resulting in death of Bhalle Ram son of Harphool Singh, occurred due to rash and negligent driving of truck bearing registration No. HP-12-K-0602, driven by respondent No. 1? OPP*
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> *(2) If issue No. 1 is proved in affirmative, what would be the amount of compensation and who would be liable to pay the same? OPP*
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> *(3) Whether respondent No. 1 was not holding a valid and effective driving license at the time of the accident and the terms and conditions of insurance policy were violated? OPR-3*
>
> *(4) Relief.*

6. In order to prove the claim petition, petitioner/claimant No.1 Ram Rati herself stepped into the witness box as PW-1. She also examined Sunil, eye-witness –cum– author of the F.I.R. as PW-2.

7. In order to rebut the case of the claimants, the respondents did not examine any witness. However, they have led documentary evidence in support of their case.

8. After hearing the arguments advanced by learned counsel for

all the parties, the claim petition filed by the claimants was allowed by passing Award dated 19.03.2019 vide which compensation to the tune of Rs. 7,71,800/- in equal shares alongwith interest at the rate of 7.5% per annum, was granted in favour of petitioners/claimants and proforma respondents, as detailed therein. Feeling aggrieved of this Award, the present appeal has been preferred by HDFC ERGO General Insurance Company Limited and the claimants/respondents No.1 and 2/cross-objectors filed their cross objections.

9. I have heard the arguments of learned counsel for the appellant/Insurance Company as well as learned counsel for respondents No. 1 and 2/cross-objectors/claimants. The learned counsel for appellant/insurance company has argued the present appeal regarding the calculation of compensation as well as the compensation which was granted under conventional heads. The learned Motor Accident Claims Tribunal, Kaithal by passing impugned Award dated 19.03.2019 had awarded compensation of Rs.7,71,800/- on account of death of Bhalle Ram in motor vehicle accident which took place on 13.09.2018. It is pointed out that late Bhalle Ram was 65 years old and he was earning Rs. 20,000/- by doing agricultural work and dairy work. However, the learned Motor Accident Claims Tribunal, Kaithal rightly assessed the income of deceased as Rs. 8600/- per month as that of unskilled labourer as the claimants had failed to lead any evidence to prove the income as mentioned in the claim application. While calculating the quantum of compensation, the learned Motor Accident Claims Tribunal, Kaithal did not consider the future prospects as the victim was more than 60 years of age. But at the same time, 1/4th income was deducted towards personal expenditure by

considering the petitioners and proforma respondents No. 4 to 6 as dependents of the deceased victim. It is pointed out that Sukhdev – claimant No. 2 was 32 years old at the time of filing of the claim application in the year 2018. The proforma respondents No. 4 to 6 all were married daughters of late Bhalle Ram. Therefore, it cannot be said that they were dependent on late Bhalle Ram. It was Ram Rati, widow of late Bhalle Ram who was dependent on her husband. Therefore, 1/2 income should have been deducted towards personal expenditure while calculating the amount of compensation. The learned counsel for appellant/insurance company has put reliance on the authority cited in ***2018(1) PLR 759, Supreme Court of India***, in case titled "**New India Assurance Co. Ltd. Versus Vinish Jain and others**" **alongwith three other cases**. In that case, in paras No. 7 and 8, it was held that :-

> *"7. This case relates to death of one A.P. Jain. He was 78 years of age. At the time of death, his annual income was assessed at Rs. 3,64,500/-. The deduction made for personal expenses at 1/3 is very low keeping in view the fact that the claimants are his two major sons and two granddaughters. The major sons have their own source of income and were not dependent on the deceased and the two granddaughters are primarily dependent on their father and not on their grandfather. We are also of the view that the High Court has erred in granting Rs. 50,000/- as loss of love and affection to each of the claimants. The total compensation granted is Rs.14,39,980/- along with interest at the rate of 7.5% per annum.*
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> *8. We feel that 50% deduction is called for and if this factor is taken into consideration then the loss*

> *of dependency is Rs. 1,82,250/- and if multiplier of 5 is used, the compensation works out to Rs.9,11,250/-. In addition, the claimants would be entitled to Rs. 70,000/- for love and affection and funeral expenses etc. as per the judgment of this Court passed in the case of Pranay Sethi (supra). Accordingly, the amount of compensation is reduced to Rs. 9,81,250/- along with interest awarded by the Tribunal."*

At this point, he has further relied upon another authority cited in ***2007(2) R.C.R.(Civil) 674, Supreme Court of India***, in case titled **"Smt. Manjuri Bera versus The Oriental Insurance Company Ltd. And Anr."**, where in that case "*the deceased had left behind only legal representative who was a married daughter. It was held that a married daughter is entitled to compensation under Section 140 though she was not dependent on deceased father.* It was further explained that *a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.* By relying upon authority cited in AIR 1987 Supreme Court 1690*, it was held that even if there is no loss of dependency the claimant if is a legal representative will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of Motor Vehicle Act."*

The learned Motor Accident Claims Tribunal, Kaithal wrongly granted Rs. 40,000/- each in favour of claimants No. 1 and 2 as well as proforma respondents for loss of filial consortium. Infact, the loss of consortium and other heads could have not been granted beyond Rs.70,000/-. Therefore, the learned Motor Accident Claims Tribunal, Kaithal has granted excessive amount of compensation which requires modification.

10. On the other hand, the respondents No. 1 and 2 filed their cross-objections No. 63 of 2021 alongwith their application bearing CM-11243-CII-2021 for condonation of delay of 134 days in filing the cross-objections as well as application bearing CM-11241-CII-2021 for condonation of delay of 473 days in re-filing the cross-objections. It was alleged that much time was consumed in engaging a counsel from the High Court through their counsel who was contesting their case in District Courts, Kaithal. Otherwise, the delay is unintentional and due to the aforesaid reason much time was consumed in clearing the objections. During this period, there was pandemic of Covid-19. Under these circumstances, the objections could not be cleared and it is prayed that delay in filing cross-objections as well as delay in re-filing the cross-objections may kindly be condoned.

The learned counsel for respondents No. 1 and 2/cross-objectors/claimants took the stand that the income of late Bhalle Ram was taken towards lower side. The future prospects were not considered. The learned counsel for respondents No. 1 and 2/cross-objectors/claimants argued that the claim of major son and married daughters on account of death of their father in a motor vehicular accident cannot be brushed aside. The learned counsel for respondents No. 1 and 2/cross-objectors/claimants have also put reliance on the authority cited in ***2007(2) R.C.R.(Civil) 674*** in **Smt. Manjuri Bera's case (Supra)**. He has also relied upon another authority cited in ***2020(1) PLJR 372, Supreme Court of India***, in case titled "**National Insurance Company Limited versus Birender and**

<u>Ors.</u>", where it was again held that "*even major married and earning sons of deceased being legal representatives have right to apply for compensation and it is for the Tribunal to consider application irrespective of the fact whether concerned legal representative was fully dependent on deceased and not to limit claim towards conventional heads only.*" No compensation was awarded for transportation of body from one place to the other. Even no compensation was granted for the loss of love and affection, except Rs. 40,000/- awarded in favour of the claimants and proforma respondents. The interest was awarded towards the lower side and the cross-objectors claimed interest at the rate of 12% per annum on the compensation awarded by the learned Motor Accident Claims Tribunal, Kaithal. It was prayed that the Award dated 19.03.2019 passed by learned Motor Accident Claims Tribunal, Kaithal may kindly be modified and the same may be enhanced, as prayed for.

11. I have considered the arguments advanced before me. In the case in hand, there is delay of 134 days in filing the cross-objections as well as delay of 473 days in re-filing the cross-objections. The perusal of record shows that even there was delay in filing of appeal of the insurance company which was condoned vide order dated 04.09.2019. There does not appear any intentional delay on the part of respondents No. 1 and 2/cross-objectors/claimants in filing as well as re-filing the cross-objections. The delay is well explained. It cannot be ignored that during this period there was pandemic Covid-19. Even otherwise, it is in the interest of justice that the matter is decided on merits. Therefore, taking a lenient view, delay of 134 days in filing the cross-objections as well as delay of 473 days in re-filing the cross-objections stands condoned and

both the applications bearing CM-11241-CII-2021 and CM-11243-CII-2021 are accordingly, allowed.

12. It is the case of appellant/insurance company that excessive amount has been awarded vide Award dated 19.03.2019, whereas, the respondents No. 1 and 2/cross-objectors/claimants have claimed enhanced amount of compensation. In the case in hand, the accident or rash and negligent driving is not disputed. On the fateful day of 13.09.2018, Bhalle Ram who was 65 years old was going to his village Kultaran on his motorcycle bearing Registration No. HR-08-W-5496 after purchasing pesticides for the crops when he was hit by the offending Truck/Container bearing Registration No. HP-12K-0602, driven by respondent No. 1 rashly and negligently. In this accident, Bhalle Ram died on the spot. The learned counsel representing the insurance company has not disputed the age of deceased victim as 65 years and it is claimed that his income was also rightly assessed as Rs. 8600/-. The learned counsel for respondents No. 1 and 2/cross-objectors/claimants took the stand that the income was assessed towards lower side but at the same time, there was nothing on record to show the income of late Bhalle Ram. Therefore, the income of late Bhalle Ram was rightly assessed as Rs. 8600/- per month by considering him as unskilled worker. With this monthly income of Rs.8600/-, the annual income comes out to be Rs. 1,03,200/-. The learned counsel for respondents No. 1 and 2/cross-objectors/claimants raised their claim that no future prospects were granted in this case. The learned Motor Accident Claims Tribunal, Kaithal has rightly relied upon the authority of Five Judges Bench of Hon'ble Supreme Court of India, case titled "**National Insurance Company Limited Vs. Pranay Sethi and others**",

in ***Special Leave Petition (Civil) No. 25590 of 2014***, where it is clear that *no future prospects can be considered for a person who is beyond 60 years of age*. In the case in hand, late Bhalle Ram was 65 years of age at the time of accident. Therefore, the stand taken by the respondents No. 1 and 2/cross-objectors/claimants is without any basis.

It was further alleged by the learned counsel for appellant/insurance company that income should have been deducted to the extent of 1/2 share as the son and daughters of late Bhalle Ram were married and independent. The perusal of record shows that at the time of filing of claim application, the respondent No. 2, son was 32 years of age, whereas, the respondents No. 4 to 6 in the claim petition were proforma respondents and all of them were married. The learned Motor Accident Claims Tribunal, Kaithal deducted 1/4th income towards personal expenditure by considering all the petitioners and respondents No. 4 to 6 as dependents. I have considered this aspect of the present case. The claimant No. 2 – Sukhdev was major, whereas, all the daughters were married and settled in their matrimonial homes. Considering this aspect, it cannot be said that all of them were completely dependent on their father late Bhalle Ram. Late Bhalle Ram was doing agricultural work. It has come in the F.I.R. that when the accident took place, he was returning home after purchasing pesticides. Therefore, Sukhdev, son was getting support of his father while doing agricultural work. Even the married daughters gets support of their father as and when required. Therefore, in my opinion, it cannot be said that once the daughters are married, they are no more dependent on their father. Even after marriage, the daughters receive support from their parents time to time. Therefore, considering these facts, in my opinion, 1/3rd income can be deducted towards personal expenditure and the dependency of the family is taken to the extent of 2/3rd income i.e. Rs. 68,800/-. Considering the age of late Bhalle Ram as 65 years, multiplier of 7 was rightly applied by the learned Motor Accident Claims Tribunal, Kaithal. Therefore, considering the annual dependency of Rs. 68,800/- with multiplier of 7, the amount of compensation comes out to be Rs. 4,81,600/-. By relying upon the authority cited in ***2018 (4) Recent Civil Reports (Civil) Supreme Court 333***, in case titled **"Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others"**, the claimants as well as proforma respondents in the Motor Accident Claim case were rightly granted Rs. 40,000/- each under the head of loss of consortium, which comes out to be Rs. 2,00,000/-. The respondents No. 1 and 2/cross-objectors/claimants are also entitled to Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenditure and with this, the total amount of compensation comes out to be Rs. 7,11,600/- which the claimants alongwith proforma respondents are entitled to receive. Considering the rate of interest prevailing at the relevant time, the compensation was rightly awarded with future interest at the rate of 7.5% per annum from the date of claim application till realization of the amount and it does not require any interference. Therefore, in the case in hand, the learned Motor Accident Claims Tribunal, Kaithal vide Award dated 19.03.2019 granted Rs. 7,71,800/- as compensation, whereas, as per the re-calculation done by this Court, the compensation amount comes out to be Rs. 7,11,600/-. In the case in hand, the learned Motor Accident Claims Tribunal, Kaithal granted compensation in favour of all the claimants and proforma respondents No.

4 to 6 in equal shares. At the time of filing of appeal by the insurance company, the operation of the impugned Award beyond Rs. 4,31,200/- was stayed. In my opinion, it is Ram Rati, widow of late Bhalle Ram who is the main sufferer. Therefore, the order passed by the learned Motor Accident Claims Tribunal, Kaithal regarding apportionment of the compensation awarded in their favour is also modified and Ram Rati, widow is entitled to receive the balance amount of compensation beyond Rs. 4,31,200/-.

In view of my above discussion, FAO No. 5386 of 2019 filed by appellant/insurance company is partly accepted and the Award dated 19.03.2019 stands modified, as discussed above and the cross-objections bearing No. 63 of 2021 filed by respondents No. 1 and 2/cross-objectors/claimants stands dismissed.

Pending application(s) if any, shall stands disposed of.

03.10.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable: Yes