IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

310 **FAO No.1900 of 2021 (O&M)**
Reserved on : 24.01.2023
Date of Decision : 31.01.2023

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

VERSUS

Babli Rani and Others ....Respondents

310-1 **FAO No.3218 of 2021 (O&M)**

Babli Rani and Others ....Appellants

VERSUS

Ramesh Kumar and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate
for the appellant in FAO-1900-2021 and
for respondent no.3 in FAO-3218-2021.

Mr. H.K. Brinda, Advocate
for respondent nos.1 to 5 in FAO-1900-2021 and
for the appellants in FAO-3218-2021.

ALKA SARIN, J.

By this common order, the above-captioned two appeals are being disposed off.

The Insurance Company has filed the appeal being FAO No.1900 of 2021 challenging the award passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as the 'Tribunal') wherein it has been held that there was contributory negligence on the part of Sukhdev Singh (hereinafter referred to as the 'deceased'), the driver of the Swift Car bearing registration No.PB-44-B-0616, who died in a motor vehicle accident with truck bearing registration no.HP-14-B-1155 (hereinafter referred to as the 'offending vehicle'). The claimants have filed the appeal being FAO No.3218 of 2021 seeking enhancement of compensation awarded by the Tribunal on account of death of the deceased.

For the sake of brevity the facts are being extracted from FAO No.1900 of 2021 and the parties will be referred to as per their status therein.

Learned counsel for the appellant-Insurance Company would contend that though the offending vehicle was parked on the wrong side of the road, however, the road was 60 to 70 ft. wide on both sides and there was 50 to 60 ft. *kachha* portion on both sides of the road as well. It is further the contention that the offending vehicle was parked on the *kachha* portion of the road and the deceased hit his car on the front side of the offending vehicle. It has further been contended that it was broad daylight and it was a sunny day and, hence, the appellant-Insurance Company ought not to have been held liable since the entire fault lay with the deceased. Learned counsel for the appellant-Insurance Company would further contend that the compensation awarded by the Tribunal is on the higher side inasmuch as the income tax returns have wrongly been relied upon by the Tribunal.

Per contra learned counsel for the claimant-respondent nos.1 to 5 has contended that there was no contributory negligence on the part of the deceased inasmuch as the offending vehicle was parked on the wrong side of the road. It is further the contention that the site plan, which was produced on the record, had not been proved in the criminal case and hence no reliance could be placed on the same. Learned counsel for the claimant-respondent nos.1 to 5 would further contend that the income of the deceased has wrongly been assessed as per the income tax returns inasmuch as the deceased was employed in Qatar and was earning Rs.60,000/- per month and further that he owned a truck from which he was earning Rs.40,000/- per month.

I have heard learned counsel for the parties.

The compensation awarded by the Tribunal reads as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[25000 x 12] = Rs.300000
2	Annual dependency of the claimants after deduction of 1/4th	[300000 - 75000] = Rs.225000
3	Future Prospects @ 40%	[225000 + 90000] = Rs.315000
4	Multiplier of 15	[315000 x 15] = Rs.4725000
5	Loss of Estate	Rs.15000
6	Loss of Consortium	Rs.40000
7	Funeral expenses	Rs.15000
	Total Compensation	**Rs.4795000/-**

In the present case the deceased was going to Kiratpur Sahib from village Moran in his own vehicle i.e. Swift car bearing registration no.PB-44-B-0616. While going from village Moran to Kiratpur Sahib, he reached near village Massewal and about 50 yards away from the turning of village Massewal, the offending vehicle was parked on the wrong side of the road as a result of which the Swift car being driven by the deceased hit into the offending vehicle. The deceased received grievous head injuries and eventually succumbed to his injuries. Harbans Singh, author of the FIR, along with Surinder Pal Singh was the eye-witnesses to said occurrence. FIR No.22 dated 25.02.2019 was registered under Sections 283, 427 and 304-A IPC at Police Station Kiratpur Sahib.

The argument raised by learned counsel for the appellant-Insurance Company that the entire fault lay with the deceased cannot be accepted. The offending vehicle was admittedly parked on the wrong side of the road. The site plan (Ex.RW1/A) sought to be relied upon by learned counsel for the appellant-Insurance Company cannot be taken into account in view of the fact that it has come in the cross-examination of RW-1, Sukhjinder Singh, Criminal Ahlmad, that in the criminal case no witness had been examined and the site plan had not been proved on the file. The argument of learned counsel for the appellant-Insurance Company also deserves to be rejected on the ground that it has come in the statement of the eye-witness Harbans Singh (PW-1) that the road on which the deceased was travelling was a wide road. In view thereof, the finding returned by the Tribunal qua the contributory negligence is maintained.

Though income of the deceased was claimed to be over Rs.1 lakh per month, however, as per the income tax returns produced on the record the income of the deceased was assessed as Rs.25000/- per month. There is no reason not to rely upon the said income tax returns for assessing the income of the deceased except for the bald statement of the claimant-respondent nos.1 to 5. There is no evidence on the record to show that the income of the deceased was about Rs.1 lakh per month. In view of the same, the income of the deceased, as assessed by the Tribunal, is maintained i.e. Rs.25000/- per month. There is no dispute qua the age of the deceased or the multiplier applied or the future prospects as granted by the Tribunal or the deduction applied towards personal expenses of the deceased. In view of the same, the award to that extent is maintained. However, no amount has been awarded under the head of loss of consortium and the conventional heads, which ought to have been granted in view of the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Limited Vs.**

Pranay Sethi and Ors. [(2017) 16 SCC 680]; Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130] and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**.

In view of the above, the enhanced amount of compensation to which the claimant-respondent nos.1 to 5 are entitled is re-calculated as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[25000 x 12] = Rs.300000
2	Annual dependency of the claimants after deduction of 1/4th	[300000 - 75000] = Rs.225000
3	Future Prospects @ 40%	[225000 + 90000] = Rs.315000
4	Multiplier of 15	[315000 x 15] = Rs.4725000
5	Loss of Consortium (i) Parental (3 children) (ii) Spousal (iii) Filial	 Rs.132000 (44000 x 3) Rs.44,000 Rs.44000 (Total Rs.220000)
6	Loss of Estate	Rs.16,500
7	Funeral Expenses	Rs.16,500
	Total Compensation	**Rs.4978000**
	Amount Awarded by the Tribunal	**Rs.4795000**
	Enhanced amount	**Rs.183000**

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the claimant-respondent nos.1 to 5 as directed by the Tribunal. Since it has been held that it was a case of contributory negligence, the claimant-respondent nos.1 to 5 would be entitled to compensation to the tune of Rs.24,89,000/-, apart from the interest component as stated above.

In view of the above discussion, the award is modified to the above extent. The appeal (FAO-1900-2021) filed by the Insurance Company is dismissed while the appeal (FAO-3218-2021) filed by the claimants is allowed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

31.01.2023
jk

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