IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5760-2012(O&M)

ICICI Lombard General Insurance Company Ltd., Hanumangarh

...Appellant

Versus

Dr.Sanjeev Kohli and others

...Respondents

(2) FAO-5761-2012(O&M)

ICICI Lombard General Insurance Company Ltd., Hanumangarh

...Appellant

Versus

Dr.Sanjeev Kohli and others

...Respondents

(3) FAO-2478-2013(O&M)

Dr.Sanjeev Kohli and others

...Appellants

Versus

ICICI Lombard General Insurance Company Ltd., Hanumangarh and ors.

...Respondents

(4) FAO-2499-2013(O&M)

Dr.Sanjeev Kohli and others

...Appellants

Versus

ICICI Lombard General Insurance Company Ltd., Hanumangarh and ors.

...Respondents

Date of Decision:-6.7.2023

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajbir Singh, Advocate for the appellant(s) in **FAO-5760-2012** and **FAO-5761-2012** and for respondent No.1 in **FAO-2478-2013 and FAO-2499-2013**.

Mr.Pardeep Bajaj, Advocate for the appellants in in FAO-2478-2013 and FAO-2499-2013 and for respondents No.1 to 3 in **FAO-5760-2012** and **FAO-5761-2012.**

Mr.Davinder Kumar, Advocate for respondent No.5 in **FAO-5760-2012** and **FAO-5761-2012** and for respondent No.3 in **FAO-2478-2013 and FAO-2499-2013.**

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H.S. MADAAN, J.

1. By this order, I shall dispose of four FAOs i.e. **FAO-5760-2012** and **FAO-5761-2012** filed on behalf of insurance company and **FAO-2478-2013 and FAO-2499-2013** filed on behalf of the claimants, which have arisen out of the same accident.

2. Briefly stated, facts of the case are that on 9.11.2008 Smt.Pushpa Devi along with her husband Sh.Parkash Chand Kohli besides some other persons were travelling in Innova car bearing registration NO.PB-11AC-0333 coming from Rampura Phul going towards Nabha after attending a marriage function; the car was being driven by Sh.Parkash Chand Kohli; when they had reached in the area of village Jetuka towards Barnala side, then a truck bearing registration No.RJ-31-GA-2255 (hereinafter referred to as the offending truck) came from

opposite side being driven by respondent No.1 Ravinder Singh in a rash and negligent manner and it collided with Innova car in question, as a result Smt.Pushpa Devi and Sh.Parkash Chand Kohli suffered multiple injuries and died at the spot, whereas other occupants travelling in the ill-fated Innova car also suffered injuries. They were taken to Adesh Hospital, where one of the injured namely Smt.Sehjot Kaur had also expired.

Formal FIR with regard to the accident was got recorded.

3. The claimants i.e. Dr.Sanjeev Kohli and Rajiv Kohli – sons as well as Monika Bhandari – daughter of Sh.Parkash Chand Kohli and Smt.Pushpa Devi had brought two separate claim petitions against respondents i.e. Ravinder Singh – driver, Harjeet Singh – owner and ICICI Lombard General Insurance Company Ltd., Hanumangarh (Rajasthan) – insurer of the offending truck.

4. The claim petition bearing MACT No.11T of 11.8.2009 had been filed by the claimants, claiming compensation of Rs.10 lakhs on account of death of their mother Smt.Pushpa Devi, submitting that the deceased was aged about 55 years, running a boutique in her house under the name and style of M/s Pushpa Boutique, Nabla and was earning Rs.10,000/- per month.

5. Whereas claim petition bearing MACT No.13T of 11.8.2009 had been filed by those very claimants with regard to death of their father Sh.Parkash Chand Kohli contending that deceased was running a transport company on lease, earning Rs.10,000/- per month and on account of his

pre mature demise, the claimants have suffered a loss and were entitled to get the compensation of Rs.10 lakhs.

6. On getting notice, all the three respondents had appeared and filed written statements contesting the claim petitions taking almost similar stand in both the claim petitions.

Respondents No.1 and 2 had submitted a joint written statement raising various legal objections, to wit that claim petitions were not maintainable; the claimants had no locus standi or cause of action to file the claim petitions; the claim petitions were bad for non-joinder of owner and insurer of the Innova car. On merits, such respondents denied that respondent No.1 had caused any accident rather contended that he had been implicated in a false case; as a matter of fact, the accident had taken place due to rash and negligent driving of the Innova car by its driver Sh.Parkash Chand Kohli, who was under the influence of liquor since he was returning from the marriage and he had misbehaved with orchestra girls in the marriage function; he had left the marriage party in anger and struck the car against the truck of respondent No.2 being driven by respondent No.1. The assertions with regard to occupation and income of the deceased were also refuted.

In the separate written statements filed on behalf of respondent No.3, the claim petitions were contested contending that respondent No.1 was not having a valid and effective driving licence at the time of the accident and the accident had not taken place in the manner as stated in the claim petitions. It was further submitted that if the accident was proved in that case it had taken place due to fault of driver of the Innova car on account of his rash and negligent driving.

All the three respondents had prayed for dismissal of the claim petitions.

7. The claimants had filed replications to the written statements filed on behalf of respondents No.1 and 2 but not to the written statements filed on behalf of respondent No.3 controverting the allegations in the written statements whereas reiterating the stand taken in the claim petitions.

8. On the pleadings of the parties, following issues were framed in MACT No.11T of 11.8.2009:-

1. Whether Pushpa Devi wife of late Parkash Chand Kohli died on account of injuries sustained in a motor vehicular accident, which took place during the intervening night of 9.11/2008 and 10.11.2008 in the area of village Jetuka towards Barnala side, P.S. Rampura Phul, District Bathinda due to rash and negligent driving of truck bearing registration No.RJ31GA 2255 by respondent No.1? OPP.
2. Whether the claimants are entitled to compensation? If so to what extent and from whom? OPP.
3. Whether the claim petition is not maintainable? OPR.
4. Whether the claimants have no locus standi to file the present petition? OPR.
5. Whether the claim petition is bad for non joinder of necessary

parties? OPR.

6. Whether this Tribunal has no jurisdiction to try the petition? OPR.
7. Whether respondent No.1 was not holding a valid and effective driving licence, if so its effect? OPR-3.
8. Relief.

9. With regard to MACT No.13T of 11.8.2009, the only difference in the issues is with regard to the name of deceased being mentioned as Sh.Parkash Chand Kohli in place of Smt.Pushpa Devi in issue No.1.

10. The parties were afforded adequate opportunities to lead evidence in support of their respective claims.

11. After hearing arguments, the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal) allowed the claim petitions vide separate awards dated 17.8.2012 and compensation of Rs.3,12,400/- with interest @ 8% per annum from the date of the claim petition till realization was awarded in claim petition bearing MACT No.11T of 11.8.2009 to claimants, payable by all the respondents jointly and severally and compensation of Rs.3,34,000/- with interest @ 8% per annum from the date of the claim petition till realization besides costs of the petition was awarded in claim petition bearing MACT No.13T of 11.8.2009 to claimants/petitioners, payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned between the claimants in both the claim petitions is also given in the

awards.

12. The respondent No.3 insurance company found the compensation so awarded in both the claim petitions to be on higher side and has challenged the same by way of filing two separate appeals i.e. FAO NO.5760 of 2012 with regard to compensation awarded in MACT No.11T of 11.8.2009 and FAO No.5761 of 2012 with regard to the compensation awarded in MACT No.13T of 11.8.2009.

13. Similarly, the claimants finding the compensation awarded to be on lower side had filed two separate appeals i.e. FAO No.2499 of 2013 with regard to the compensation awarded in MACT No.11T of 11.8.2009 and FAO No.2478 of 2013 with regard to the compensation awarded in MACT No.13T of 11.8.2009.

14. Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

15. I have heard learned counsel for the parties besides going through the record.

16. It may be mentioned here that the Tribunal in MACT No. 13T of 11.8.2009 taking into view the eye-witness account of the accident provided by AW1 Rajiv Kohli and AW2 Darshan Kumar and considering the FIR lodged regarding the accident as Ex.C7 and copy of postmortem report of Sh.Parkash Chand Kohli as Ex.C and the fact that respondent No.1 had not appeared to rebut the evidence adduced by the claimants and to support the version of such respondent set up in the written statement, had returned a finding that accident in which the deceased had lost their

lives had taken place on account of rash and negligent driving of the offending truck by respondent No.1 Ravinder Singh. This finding was not challenged by learned counsel for the appellant – insurance company during the course of arguments and he has confined his arguments with regard to quantum of compensation awarded.

17. Though learned counsel for the appellant – insurance company has tried to built up argument that the compensation awarded by the Tribunal in both the claim petitions is on higher side but I do not find myself in agreement in that regard. Rather I find merit in the arguments advanced by learned counsel for the appellants/claimants that the compensation awarded is on the lower side.

18. Firstly taking up the compensation awarded by the Tribunal in MACT No.11T of 11.8.2009 on account of death of Smt.Pushpa Devi.

19. As per the case of the claimants, she was aged 55 years and running a boutique in her house under the name and style of M/s Pushpa Boutique, Nabla, earning Rs.10,000/- per month. The Tribunal has observed that there was no definite proof regarding income of the deceased but then referring to various judgments wherein it was observed that the housewife besides performing here matrimonial duties also performed multifarious services including managing the entire family affairs taking care of her husband and children which including cooking of food, washing of clothes, therefore, the notional income of the deceased in this case was assessed to be Rs.4,200/- per month.

20. However, I find that the income so assessed to be on the

lower side. No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In ***Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673***, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month.

21. Keeping in view the facts and circumstances of the case, the age of the deceased, I find that it would be proper and appropriate if the notional income of the deceased Smt.Pushpa Devi is taken to be Rs.6,000/- per month.

22. The Tribunal has rightly deducted 1/3rd of the notional income towards personal and living expenses of the deceased. In that way,

the contribution of the deceased Smt.Pushpa Devi towards the claimants comes out to be Rs.4,000/-(6000 – 2000). The annual contribution/dependency comes out to Rs.48,000/-(4000 x 12).

23. The Tribunal has taken the age of the deceased Smt.Pushpa Devi to be 58 years as entered in her postmortem report as Ex.A2. I do not find any fault in approach of the Tribunal in doing so. The multiplier of 9 has been correctly applied by the Tribunal. Doing that the compensation comes out to be Rs.4,32,000/-(48000 x 9).

24. The Tribunal has not awarded any amount towards conventional heads. However, as per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate. The total compensation comes out to be Rs.5,02,000/- (Rs.432000 + 40000 + 15000 + 15000).

25. The Tribunal has awarded compensation of Rs.3,12,400/-.

26. In this way, the enhanced amount comes out to be Rs.1,89,600/- (502000 - 312400). The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

27. Now coming to the compensation awarded in MACT No.13T of 11.8.2009 on account of death of Sh.Parkash Chand Kohli.

28. In this case to establish the income of the deceased as

Rs.10,000/- per month, the claimants have examined Darshan Kumar, Accountant of M/s Amloh Transport Company, Amloh, who produced documents Ex.C1 to C6. The Tribunal has rejected his testimony for the reason that he had not brought any authority letter to depose on behalf of the company and was not in possession of any agreement regarding leasing out the company in favour of the deceased.

29. In my considered view, such approach of the Tribunal was not proper. It has been consistent case of the claimants right from the beginning as pleaded in the claim petition itself that deceased was running a transport company on lease earning Rs.10,000/- per month. They had examined a witness with record to prove that fact i.e. Darshan Kumar working as Accountant with M/s Amloh Transport Company, Amloh. In his affidavit Ex.CW2/1, he had contended that he used to maintain account books of of M/s Amloh Transport Company, Amloh in daily routine and such company had two buses vide registration No.PB11C-9731 and PB-23-5751; Parkash Chand Kohli (deceased) had taken those buses on lease w.e.f. 1.4.2006 and used to ply the same and control the affairs of the company. The witness had further stated that he had brought account books of the company for the period from 2006 – 2007 and 2008-2009 preparing the balance sheets, copy of which were Ex.C1 to Ex.C3. He stated that the company used to pay Rs.10,000/- per month as commission to Parkash Chand Kohli. He had proved copy of certificates as Ex.C4 to Ex.C6. In his cross-examination, he could not be shattered on any point. The case of the claimants duly proved from the oral testimony

of AW2 Darshan Kumar and document proved by him. No evidence in rebuttal had been adduced by the respondents. The Tribunal clearly fell in error in assessing the notional income of deceased Parkash Chand Kohli as Rs.4,500/- when enough cogent and convincing evidence had been adduced by the claimants to prove his avocation and actual income.

30. Therefore, I take the income of the deceased Sh.Parkash Chand Kohli to be Rs.10,000/-. The Tribunal has rightly taken the age of deceased to be 60 years in view of his such age entered in his postmortem report Ex.C8. Therefore, no addition towards future prospects is to be made. The Tribunal has rightly made deduction of 1/3rd towards personal expenses. Thus the monthly dependency of the claimants comes out to Rs.6,667/- (10000 – 3333). The annual dependency comes out to Rs.80,004/- (6667 x 12).

31. Keeping in view the age of the deceased to be 60 years, the Tribunal has rightly used multiplier of 9. Doing that the compensation comes out to be Rs.7,20,036/- (80004 x 9).

32. Under the conventional heads i.e. love and affection and funeral expenses, the Tribunal has awarded Rs.5,000/- under each head to the claimants.

33. However, as per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors.***(supra), the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate. The total

compensation comes out to be Rs.7,90,036/- (Rs. 7,20,036 + 40000 + 15000 + 15000).

34. The Tribunal has awarded compensation of Rs.3,34,000/-.

35. In this way, the enhanced amount comes out to Rs.4,56,036/- (7,90,036 - 3,34,000). The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

36. With these modifications, **FAO-2478-2013 and FAO-2499-2013** filed on behalf of the claimants stand allowed partly.

37. Consequently, **FAO-5760-2012** and **FAO-5761-2012** filed on behalf of the insurance company stand dismissed.

Since **FAO-2478-2013 and FAO-2499-2013** filed on behalf of the claimants stand allowed partly and **FAO-5760-2012** and **FAO-5761-2012** filed on behalf of the insurance company stand dismissed, the miscellaneous application(s), if any stand disposed of accordingly.

6.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No