

(1) FAO-4413-2013 (O&M)
 Reserved on: 25.05.2023
 Date of Pronouncement: 01.06.2023

...Appellants

Versus

...Respondents

IFFCO TOKIO General Insurance Company Ltd.

...Appellant

Versus

...Respondents

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

Present: Mr. R.S. Mamli, Advocate for the appellants
in FAO-4413-2013 and for respondents No.1 to 4
in FAO-2373-2013.

Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant in FAO-2373-2013 and
for respondent No.3 in FAO-4413-2013.

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H.S. MADAAN, J.

This order of mine shall dispose of above mentioned two appeals arising out of the same award one filed by claimants seeking enhancement of compensation and other by insurance company seeking setting aside/reduction of compensation.

2. Briefly stated facts of the case are that petitioners/claimants Smt. Rajnesh Devi, widow, Ms. Simran, minor daughter, Jashan minor son, Smt. Kamlesh Devi, mother of Chander Pal, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Raj Kumar driver, Prem Kumar owner and Iffco Tokio General Insurance Company Ltd., Gurgaon-insurer of Alto car bearing registration No.HR02-Z-7174 (for short 'the offending vehicle') claiming compensation of Rs.40 lacs.

3. As per case of the claimants, deceased Chander Pal was employed in Haryana Police Department and was undergoing training at Madhuban. On 09.04.2012 at about 12.30 PM, Chander Pal met his uncle Rajpal at a tea stall situated on western bridge of Yamuna of Radaur-Jathlana road. The deceased was to go to his village Rajheri and was just to start his journey on his motorcycle bearing registration No.HR02-K-1360 from that tea stall, then the offending car came from Radaur side being driven by respondent No.1 in a rash and negligent manner at a very high speed and without blowing horn or giving indication, it struck against the motorcycle of the deceased from behind. Resultantly Chander Pal fell on the road along with the motorcycle and suffered grievous injuries on his person. Rajpal son of Inder Singh who had witnessed the accident along with other persons removed the injured to Civil Hospital, Yamuna Nagar, however, Chander Pal had died on the way before reaching the hospital. The car

driver had sped away the car after the mishap. Formal FIR No.41 dated 09.04.2012 for offences under Sections 279, 337, 338, 304-A IPC was registered at Police Station Radaur. The petitioners/claimants had filed the claim petition in question.

4. On being put to notice, all the three respondents appeared and offered a contest. Respondents No.1 and 2 filed a joint written statement wherein they took up preliminary objections that the claim petition was not maintainable and it was bad on account of concealment of material facts. On merits, such respondents denied the accident submitting that even if any such accident had taken place, it was due to sole negligence of the deceased who was driving his motorcycle at a fast speed on the road without observing the traffic rules. According to answering respondents, the car in question was insured with respondent No.3-insurance company.

5. In a separate written statement submitted by respondent No.3-insurance company, while denying the accident it was contended that the claim petition had been filed with a view to defraud the answering respondent. In the alternative, it was pleaded that the driver of the car was not holding any valid and effective driving license at the time of accident. Defence under Sections 147, 149, 157 and 170 of the Motor Vehicles Act was also raised. It was contended that if it was proved that the deceased was an employee of Haryana Government, then as per Government notification on death of any Govt., employee, the family of the employee would continue to receive as financial

assistance, a sum equal to the pay and other allowances as per last pay drawn by the deceased employee and the family shall be eligible to receive family pension as per norms. It was admitted that the car in question was insured with such respondent. In the end, all the three respondents prayed for dismissal of the claim petition.

6. From the pleadings of the parties, following issues were framed:-

1. Whether the respondent No.1 has caused the accident by driving the offending vehicle bearing registration No.HR-02-Z-7174 in a rash and negligent manner thereby causing death of Chander Pal? OPP.
2. If issue No.1 is proved, to what amount of compensation and from whom the claimants are entitled to? OPP.
3. Whether petition is not maintainable? OPD.
4. Whether the claimants have no locus standi to file the present petition? OPR.
5. Whether the respondent No.1 was not holding any valid and effective driving licence at the time of alleged accident and has violated the terms and conditions of the insurance policy? OPR.
6. Relief.

7. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

8. After hearing arguments, Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri, (for brevity 'the tribunal') vide award dated 23.01.2023 accepted the claim petition and awarded compensation of Rs.44,55,375/- to the claimants along with interest @ 9% p.a., from the date of filing of claim petition till actual realization, payable by respondents No.1 to 3 jointly and severally.

9. The petitioners/claimants found the compensation so awarded to be on lower side and have filed an appeal bearing No.FAO-4413-2013 whereas according to respondent No.3-insurance company, the compensation awarded was on very high side and it has also filed an appeal bearing No.FAO-2373-2013.

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

11. While determining the question as to whether the accident in which the deceased had lost his life, had taken place due to rash and negligent driving of the offending car by respondent No.1 and while giving verdict on issue No.1 framed in that regard, the tribunal had taken into consideration the deposition of PW-2 Rajpal who had provided the eye witness account of the accident deposing inconsonance with the case of the claimants categorically stating that respondent No.1 was author of the accident by his rash and negligent driving of the offending car resulting in death of Chander Pal. The tribunal also took note of the fact that a formal FIR with regard to the accident had been registered against respondent No.1, copy of FIR being Ex.P1 and then on completion of investigation, respondent No.1 had been sent up to face trial as per copy of Final Report under Section 173 Cr.P.C., Ex.P3. PW-1 Sunny Gehlot, Criminal Ahlmad had proved those documents including copy of post mortem report of deceased Ex.P2 and copy of cover note of the car in question Mark 'A'. The evidence brought on record by the claimants on the said issue had gone

un-rebutted. The respondents had not led any evidence on this issue. Respondent No.1 driver of the car could not summon courage to step into the witness box to depose on oath that the car being driven by him, had not caused any accident and he was not rash or negligent in any manner.

12. Similarly, respondent No.2 Prem Kumar did not appear to state on oath that the car belonging to him and being driven by respondent No.1 had not caused any accident, resulting in death of Chander Pal. Therefore, considering the evidence available on record and the judicial pronouncements, the tribunal had rightly adjudged issue No.1 in favour of the claimants and against the respondents and no different view in the matter needs to be taken.

13. As far as the quantum of compensation assessed, the tribunal on the basis of evidence available on record, in view of the fact that the deceased was employed as Head Constable in Police Department of District Ambala, his age was taken to be 37 years, considering the date of birth entered in his migration certificate Ex.P4 as 21.09.1975, such certificate was produced in evidence by the claimant Smt. Rajneesh Devi PW-3 widow of the deceased along with her affidavit Ex.PW3/A.

14. PW4 EASI Gurbaksh Singh had brought the summoned record pertaining to HC Chander Pal and he deposed that Chander Pal had gone for training for Intermediate School Course w.e.f. 02.01.2012 for promotion. He proved relevant documents as Ex.P4 to P6 and

salary certificate Ex.P7. This witness had deposed that as per pay slip Ex.P7, salary of Chander Pal for the month of March 2012 prepared in the month of April 2012 was Rs.21,927/-.

15. Addition of 50% was made towards future prospects considering the age of deceased as 37 years i.e. below 40 years. Thus the compensation was worked out to be Rs.32,890 (21927 + 10963).

16. The tribunal had deducted 1/4th of amount towards personal and living expenses of the deceased keeping in view the number of dependent family members being four and then dependency of the claimants worked out to be Rs.24668/-, annual dependency thus comes to be Rs. 2,96,016/-.

17. The tribunal has rightly applied multiplier of 15. Doing that, the compensation comes out to Rs.44,40,240/- (rounded off to Rs.44,40,375/-). However, the tribunal did not deduct the financial assistance provided by the Government to the claimants i.e. family members of the deceased. While declining to do so, the tribunal had relied upon a judgment passed by a Division Bench of this Court in case **Reliance General Insurance Company Ltd. Vs. Purnima & Ors.** in FAO-1322-2010. But then controversy has been set at rest by the Apex Court through judgment **Reliance General Insurance Company Ltd. Vs. Shashi Sharma & Ors.** 2016 (4) RCR (Civil) 569 wherein it was observed that in case of death of a Government employee in a motor accident, the insurance company is entitled to deduct amount receivable by the dependents of the deceased

Government employee in terms of Rule 5(1) of Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, Rules 2006.

18. PW-4 EASI Gurbaksh Singh from Accounts Branch, Office of Deputy Commissioner, Ambala in his cross-examination had stated that widow of the deceased was getting regular salary of her husband since the date of his death @ Rs.21,536/- per month and after age of 55 years of the deceased, his family will get pension every month.

19. Learned counsel for the appellant has referred to notification dated 01.08.2006 issued by the Haryana Government, General Administration Department with regard to Haryana Compassionate Assistance to the Dependents of Deceased Government Employees, Rules 2006 Ex.R1, submitting that as per Rule 5 on death of any Government employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in normal course without raising a specific claim. As per sub Section (b) that financial assistance would be for a period of 12 years or till the date the employee would have retired from Government service on attaining the age of superannuation whichever is less, if the employee at the time of his death had attained the age of 35 years but had not attained the age of 48 years. In that way, since in this case, the deceased was aged 37 years, the claimants who happened to be his family members would get the financial assistance for a period of 12

years. That amount on being calculated is worked out to Rs.31,01,184/- (21,536 x 12 x 12). The tribunal has awarded compensation of Rs.44,55,375/- after deducting amount of Rs. 31,01,184/-, the balance comes out to Rs.13,54,191/-. The interest granted by the tribunal @ 9% p.a., is somewhat on the higher side. The same is reduced to 7.5% p.a. In that way, since the compensation amount has been reduced, there is no question of enhancing the same. Therefore, the appeal bearing No. **FAO-4413-2013** filed by the claimants seeking enhancement of compensation is dismissed with costs whereas the appeal filed by appellant-insurance bearing No. **FAO-2373-2013** company is accepted partly.

20. Resultantly, the impugned award is modified and compensation awarded to the claimants is reduced to Rs.13,54,191/- payable by all the respondents jointly and severally with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization. The apportionment of compensation and manner of its disbursement shall remain the same as directed in the impugned award, though, shares of the claimants shall be reduced proportionately. The claimants shall refund the excess amount received by them within one month, if the insurance company has already made the payment of compensation originally granted. Otherwise, the insurance company shall be entitled to recover this amount by filing an execution application before the Motor Accidents Claims Tribunal, Yamuna

01.06.2023

sumit.k

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes

No
No

(H.S. MADAAN)
JUDGE