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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2825-2021(O&M)
Date of decision: January 11, 2023

United India Insurance Company Limited

….Appellant

versus

Smt. Kartaro Devi (since deceased) and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sidhant Mehra, Advocate for the appellant.

Mr. Inderjeet Sharma, Advocate for respondents No.1 and 2.

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<u>ARUN MONGA, J. (ORAL)</u>

Aggrieved with award dated 13.08.2021rendered by learned Motor Accidents Claims Tribunal, Ambala (for brevity, Tribunal), appellant/Insurance Company is before this Court seeking setting aside of the same.

2. Facts are not in dispute. Succinct facts as noted by the Tribunal are as below:

> "*4. The pleaded facts are that on 06.08.2007 Gurdev Singh alias Sukhdev Singh son of the claimants alongwith Rakesh Kumar weresleeping on the divider of N.H-1, on a wooden bed in front of the Petroleum Depot, Ambala Cantt., after parking their respective vehicles by the side of the road. At about 4.00a.m. Tata Safari bearing registration no.DL-1-CJ-3672(hereinafter referred to as "offending vehicle") came from Delhi side being driven by respondent no.1 Vijay Shyam Mishra and hit Gurdev Singh alias Sukhdev Singh and Rakesh Kumar who were sleeping there. As a result of this accident they both suffered multiple grievous injuries and taken to Civil Hospital, Ambala Cant. by patrolling gypsy but Gurdev Singh @ Sukhdev Singh died on reaching the hospital. On the basis of complaint, FIR No.189 of 2007 under Sections 279,338,304-A IPC was registered against the respondent no.1.*"

3. Upon notice, respondents-driver and owner filed written statement raising allegation that no accident took place and vehicle had been falsely implicated by the police. Respondent-Driver had been acquitted of the charges on 06.01.2012 in criminal case.

4. Insurer-appellant filed written statement claiming it to be a case of contributory negligence on the part of claimant's son Gurdev Singh and also sought to be absolved as respondent No.1 was not having valid driving licence at the time of alleged accident.

5. Learned Tribunal framed the following issues:

> "*1. Whether the accident took place due to the rash and negligent driving of Tata Safari no.DL-1-CJ-3672 by the respondent no.1, as alleged in the petition? OPP*
> *2. If issue no.1 is proved, then what amount of compensation and from whom the claimants are entitled to receive it? OPP*
> *3. Whether the present petition is not maintainable being the claimants have already filed the claim under Employees Compensation Act, 1923? OPR*
> *4. Whether there is violation of terms and conditions of the insurance policy and respondent no.3-Insurance Company is not liable to pay any compensation? OPR.*
> *5. Relief.*"

6. On appraisal of record/ evidence, learned Tribunal decided issues No.1& 2in favour of claimants. Consequently, claimants were held entitled to receive compensation of Rs.10,17,200/- in equal shares along with interest @ 9% per annum from the date of filing of petition till actual realization.

7. I have heard learned counsel for the parties and perused the record.

8. To the extent that learned counsel for the appellant-Insurance Company contends that deceased was bachelor, the dependency component ought to have been considered as $1/2^{nd}$and not $1/3^{rd}$ as has wrongly been done

by the learned Tribunal. Nothing substantial contrary thereto could be urged by the learned counsel for the respondents. After applying the principles settled in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi,** reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, I am inclined to agree to the contention of learned counsel for the appellant. The amount of compensation is therefore, recalculated as below:-

Deceased	Gurdev Singh
Date of accident/death	06.08.2007
Age	23 years
Claimants	2 (Mother and father)
Annual Income of the deceased	Rs.4,500/- per month x 12 = Rs.54,000/-
Future prospects	40% (Rs.54,000+21,600) = Rs.75,600/-
Deduction in dependency	$1/2^{nd}$ (75,600-37,800)=Rs.37,800
Multiplier@ 18	Rs.6,80,400/- (Rs.37,800/- x 18)
Loss of love and affection	Rs.80,000/- (Rs.40,000 x 2)
Loss of Estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	Rs.7,90,400/- (Rs.6,80,400 + Rs.80,000 + Rs.15000 + Rs.15000)
Compensation awarded by the Tribunal	Rs.10,17,200/-
Excess amount of compensation	Rs.2,27,000/- (Rs.10,17,200-Rs.7,90,400/-)

9. Accordingly, the impugned award is modified in terms of the above computations. As per notice of motion order dated 03.11.2021, the appellant-Insurance Company was directed to deposit the amount with interest and cost with the Tribunal, which be disbursed to the claimants on

getting an undertaking from them that in case the award is set aside or modified in appeal, then they would refund the amount to the Insurance Company.

Claimants are accordingly, directed to refund the excess amount paid to them, in case the same has already been disbursed to them.

10. Disposed of in above terms.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No