217 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: April 11, 2023

1. FAO-2801-2015 (O&M)

National Insurance Company Ltd.

….Appellant

versus

Makhna Devi and others

….Respondents

2. FAO-1464-2015 (O&M)

Makhna Devi and others

….Appellants

versus

Mohd. Ashraf and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate for appellant-Insurance Company
in FAO-2801-2015 and
for respondent No.3-Insurance Company
in FAO-1464-2015.

Ms. Ekta Thakur, Advocate for appellants
in FAO-1464-2015 and for respondents No.1 to 3 and 5
in FAO-2801-2015.

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ARUN MONGA, J. (ORAL)

CM-8677-CII-2015 IN FAO-2801-2015

For the reasons stated in application, same is allowed subject to all just exceptions. Delay of 33 days in re-filing appeal is condoned.

CM-8678-CII-2015IN FAO-2801-2015

For the reasons stated in application, same is allowed subject to all just exceptions. Delay of 29 days in filing appeal is condoned.

CM-4127-CII-2015 IN FAO-1464-2015

For the reasons stated in application, same is allowed subject to all just exceptions. Legal heirs of deceased Munshi Ram (claimant) as mentioned in Para-2 of the application are ordered to be impleaded.

CM-4128-CII-2015 IN FAO-1464-2015

For the reasons stated in application, same is allowed subject to all just exceptions.

Main cases (O&M)

Vide this common order and judgment, above-mentioned two appeals are being disposed of since facts are analogues and issues raised therein are common. For brevity, recitals are taken from FAO-2801-2015.

2. Appellant before this Court is Insurance Company seeking to set aside impugned award dated 11.08.2014 rendered by learnedMotor Accidents Claims Tribunal, Chandigarh (for brevity, "Tribunal").

3. Succinct facts, as noted by learned Tribunal, are as below:

> "*1. xx xx xx. Accident took place on Dhar road near duddarnala on 3.5.2013 at about 5:00 pm in the area of Police Station Udampur. Deceased was going driving his car No. CH01-AH-7353 from the side of Mansar to Udampur when truck No. JK-18-1910 being driven by respondent No.1 Mohammad Ashraf at a very high speed and in negligent manner hit against the car of deceased. As a result of this accident, deceased suffered multiple injuries on vital organs of his body along with co-occupants. Immediately after the accident, deceased was taken to hospital but despite best treatment given to him, he died on the same day. xx xx xx"*

4. Upon notice, respondentsNo.6 &7 herein (Driver and Owner of alleged offending truck) failed to appear, despite service and were proceeded against *ex parte*, on 23.01.2014.

4.1. Appellant-Insurance Company filed written statement raising objections that claim application was totally vague and did not disclose any cause of action against the insurance company, as such, itwas liable to be dismissed.

Claim petition wasalso objected to be in contravention of provisions of the Motor Vehicles Act, 1988.It was averred that driver of truck bearing registration No.JK-18-1910 was not holding a valid driving licence at the time of alleged accident. Further averred that as per FIR and other documents, it was a head-on collusion between the truck and car and was a case of contributory negligence of both drivers.

4.2. Furthermore, appellant in its written statement denied the personal particulars of the deceased and also denied factum of occurrence accident for want of knowledge. It was pleaded that none of the partieshad ever informed the insurance company regarding occurrence. Prayer for dismissal of claim petition was thus made.

5. Learned Tribunal framed the following issues:

> "*1. Whether deceased Ramesh Kumari (wrongly typed otherwise Ramesh Kumar) died in a road accident which took place on 3.5.2013 at about 5:00 pm near Dhar Road near DuddarNala due to rash and negligent driving of vehicle No. HJ-18-1910 (wrongly typed otherwise number is JK-18-1910) by its driver-respondent No.1? OPP*
> *2. Whether the claimants are entitled to any compensation, if so, how much and from whom? OPP.*
> *3. Whether the respondent No.1 was not holding a valid driving licence at the time of accident, if so, its effect? OPR-3.*
> *4. Relief.*"

6. On appraisal of record/ evidence, learned Tribunal decidedissues No.1 to 3 in favour of claimants and against respondents. Consequently, claimants were held entitled to compensation of Rs.52,43,280/-to be paid by Insurance Company to claimants.

7. Learned counsel for respondents No.1 to 3 and 5-claimantswould contend that deceased was 39 years of age at the time of accident andTribunal has granted inadequate compensation towards loss of dependency. Only Rs.25,000/- has been awarded towards loss of love and affection. Further,a very low rate of

interest@ 6% p.a.has been awarded.Counsel also contends that amount awarded on account of loss of consortium is also on lesser side.Compensation on these heads need to be modified by enhancement thereof.

8. On the other hand, learned counsel for appellant-Insurance Company opposes aforesaid contentions and prays for setting aside of impugned award of learned Tribunal.

9. Learned counsel for the appellant argues that it was a case of head on collision, which in itself establishes it to be a case of contributory negligence.And yet, the learned Tribunal wrongly held that the accident was caused solely by the negligent driving of the truck by its driver. The monthly income of the deceased was also wrongly assessed at Rs.25,152/- and; in any case, the compulsory deduction income tax was not made, is the argument.

10. Having heard the rival contentions and perused the impugned award and on perusal of impugned award, I find that the submissions made before learned Tribunal were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

11. Narrative of the case pleaded by the appellant, as noted in the impugned order, does not show if the appellant had taken any stand before the Tribunal, to the effect, that the case was one of contributory negligence. Whereas, direct evidence has come on record showing that the accident was caused by the rash and negligent driving of the offending truck. Merely because, it was a case of head-on collision, it cannot be said on conjectures and surmises that the deceased was also negligent in driving his car and it was a case of contributory negligence. The deceased was a machine man posted with the Controller of Stores, Punjab. As per salary certificate, he was earning Rs. 25,152/- per month at the time of his

death. In my opinion, the learned Tribunal rightly assessed the same amount as his monthly income. Of course, the compulsory deduction of income tax had to be made out of it.

12. Applying the principles in cases 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 of the view that compensation ought to be computed under various heads, as under:-

Deceased	Ramesh Kumar
Date of accident/death	03.05.2013
Age	39 years
Marital Status	Married
Claimants	Wife, minor son, daughter and parents
Income of the deceased	Rs.25,152/- p.m.
Future prospects	50% (Rs.25152+12,576) = Rs.37,728/-
Deduction in dependency for personal expenses	1/4th (37,728-9,432)=Rs.28,296/-
Annual dependency	Rs.3,39,552/- (28,296 x 12)
Less Income Tax @ Rs.1,000/-	Rs.3,38,552/-
Total loss of dependency with Multiplier of 15	Rs.50,78,280/-
Loss of Consortium	Rs.2,20,000/- (Rs.44,000 x 5)
Loss of estate & funeral expenses	Rs.33,000/- = Rs.16,500/- + Rs.16,500/-
Total	Rs.53,31,280/- (50,78,280 + 2,20,000/- + Rs.33,000/-)
Compensation awarded by the Tribunal	Rs.52,43,280/-
Enhanced amount of compensation to be paid	**Rs.88,000/-** (Rs.53,31,280-Rs.52,43,280/-)

13. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interestas awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2

months of their approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in terms of the apportionment, as already determined by learned Tribunal.

14. In the premise, **FAO-2801-2015** filed by Insurance Company stands dismissed and **FAO-1464-2015** filed byclaimants seeking enhancement of compensationis disposed of in above terms.

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

(ARUN MONGA)
JUDGE

April 11, 2023
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No