IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 18.11.2022
Pronounced on:15.02.2023

(1) **FAO-2062-2016 (O&M)**

Minakshi Devi and others

Appellants.

vs.

Mukesh Kumar and ors.

Respondents.

(2) **FAO-2308-2016 (O&M)**

Cholamandlam MS General Insurance Company Ltd.

Appellant.

vs.

Minakshi Devi and ors.

Respondents.

CORAM: - HON'BLE MR JUSTICE SANJIV BERRY

Present: - Mr. Randeep Singh, Advocate,
for the appellants in FAO-2062-2016.

Ms. Vandana Malhotra, Advocate,
for respondent No. 3 in FAO-2062-2016 and
for the appellant in FAO-2308-2016.

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SANJIV BERRY, J.

By this order, I shall dispose of above mentioned two appeals i.e. FAO-2062-2016, preferred by Minakshi Devi and others and FAO-2308-2016, preferred by Cholamandlam MS General Insurance Company

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Ltd. seeking modification of the award dated 06.11.2015 passed by the Motor Accident Claims Tribunal, Karnal, (for short, 'the Tribunal').

2. Brief facts of the case are that the claimants in FAO 2062 of 2016 are the widow, minor children and parents of deceased Naresh Kumar. On 18.09.2014, Naresh Kumar along with one Raju (pillion rider) was going from village Khanpur, Tehsil Indri, District Karnal to R.P. Suri Hospital, Ladwa, on motorcycle No. HR-02J-8139. At about 7 p.m., when they reached ahead of village Dhumsi, Tralla bearing registration No. PB-03P-9483 was stationed in the middle of the road having its face towards Ladwa side. Neither its indicators nor reflectors were on nor any other barricades were laid down by the driver of the offending vehicle. When Naresh Kumar started crossing the said stationed Tralla, a truck was seen coming from Ladwa side and then Naresh Kumar applied brakes of his motorcycle, but the said motorcycle struck into the back side of the said stationed Tralla. Resultantly, Naresh Kumar sustained multiple and grievous injuries whereas Raju sustained minor injuries. People gathered there and shifted Naresh Kumar to CHC Indri, from where he was referred to General Hospital, Karnal, but on the way to General Hospital, Karnal, he succumbed to the injuries. Thereafter, FIR No. 379 dated 18.09.2014 was registered under Sections 283, 304-A of IPC against respondent No. 1 at Police Station Indri. At the time of the death of the deceased, he was 29 ½ years of age and working as Mason and earning ₹15,000/- per month.

3. The claim petition was contested by the respondent No. 1

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2024.06.04 17:01
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and 2 on the ground that the same was not maintainable and it was asserted that no accident had taken place with the involvement of Tralla in question. The respondent No. 3-Insurance Company, *inter alia*, contended that claim petition was alleged to be based on false and concocted story and sought protection by way of defence under Sections 134(C), 147 and 149 of the Act and further alleged that the offending Tralla was being plied in violation of the terms and conditions of the insurance policy. It was also submitted that no intimation regarding the accident as required under Section 134(C) of the Act was furnished to the Insurance Company by the insured of the Tralla in question and, therefore, the Company has no liability to indemnify the insured.

4. Learned Tribunal, after taking into consideration the evidence led by the parties, held the age of the deceased as 31 years at the time of accident as per his Voter ID Card (Mark-B) and took his income as ₹6,700/- per month as there is no proof available regarding deceased earning ₹15,000/- per month. Thereafter, taking into consideration the law laid down by the Apex Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(2) Apex Court Judgments (Supreme Court) 245***, the Tribunal granted 50% increase in his annual income ₹10,050/- (6700+3350) as future prospect, deceased being less than 40 years of age. As per law laid down by Hon'ble Apex Court in ***Sarla Verma and others vs. Delhi Transport Corporation and Another, 209 ACJ 1298,*** standard deduction of 1/5th of the total income of the deceased was assessed at ₹8040/- per month (₹10,050-₹2010 = ₹8040), after applying the multiplier

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2024.06.04 17:01
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of 16 as per the judgment of the Hon'ble Apex Court in ***Sarla Verma's (Supra)****, the* Claimants were awarded compensation by the learned Tribunal with interest @ 6% per annum as under:-

Sr. No.	Heads	Compensation Awarded
(i)	Salary/Income	₹ 6700/- per month
(ii)	50% of (i)to be added as future prospects	(₹ 6700+3350=10050) ₹ 10,050/-
(iii)	1/5 of deducted as personal expenses of the deceased	(₹ 10,050-2010=8040) ₹ 8040 per month
(iv)	Compensation after applying multiplier of 16	(₹ 8040x12x16=15,43,680) ₹ 15,43,680
(v)	Loss of consortium	₹ 1,00,000/-
(vi)	Loss of care and guidance for minor children	₹ 1,00,000/-
(vii)	Transportation & Funeral Expenses	₹ 50,000/-
	Total compensation awarded (Total of (iv) and (vii)	₹ 17,93,680/-

5. Hence, the instant appeal and cross-appeal by the claimants as well as the Insurance Company.

6. While addressing arguments, counsel for appellant has relied upon the judgment of the Constitution Bench passed by the Hon'ble Apex Court in ***'National Insurance Company Limited vs. Pranay Sethi and Ors.', 2017(4) RCR (Civil) 1009, (Law Finder Doc Id#918174)***; ***'Sarla Verma and Others vs. Delhi Transport Corporation and another' 2009 (3) RCR (Civil) 77 and 'Magma General Insurance Co. Ltd vs. Nanu Ram alias Chuhru Ram and ors.' (2018) 18 Supreme Court Cases 130*** counsel for the appellant submits that the loss of estate i.e ₹16,500/- should have also been awarded. Learned counsel for the claimant-

Gyan Chand
2024.06.04 17:01
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appellants has further contended that the deceased was aged about 29 ½ years and was the only bread earner of the family All the appellants were dependent on him. He was working as Mason and his monthly income was ₹15,000/-. However, the income of the deceased i.e. ₹6700/- per month determined by the Tribunal is on lesser side, treating him as an unskilled labourer. Multiplier of 18 is to be applied instead of 16. All the claimants i.e. minor children, widow and parents of the deceased be awarded ₹1,00,000/- each.

7. On the other hand, learned counsel for respondent No.3 Insurance Company contends that the accident in question occurred due to the contributory negligence of the respondent No.8 as well as the deceased who was driving the motorcycle, the compensation awarded may be reduced and the liability may be fixed in view of the contributory negligence of the deceased himself, as such he prays for reduction in the compensation.

8. I have gone through the impugned award and the record apart from hearing learned counsel for the parties.

9. In the appeal filed by the Insurance Company the sole contention of the learned counsel for the Insurance Company is that the accident in question occurred due to the contributory negligence of the respondent No.8 as well as the deceased who was driving the motorcycle. The issue in question was dealt with by the learned Tribunal in issue No.1 and on the basis of documentary evidence on the record coupled with the legal position has rightfully held that accident took place because of

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2024.06.04 17:01
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negligent act of wrong parking of the offending vehicle by respondent No.8 resulting in death of the deceased Naresh Kumar.

10. The monthly income of the deceased was ₹6,700/- and as per the guidelines of ***Pranay Sethi's case (supra)*** 40% of the income towards future prospect is to be added to the receiving amount of the salary. It is not a matter of dispute that the future prospect of 40% of the income of the deceased would be applicable because deceased was admittedly in self employed business and was 31 years old. In the judgment of the Constitution Bench in ***Pranay Sethi's case (supra)*** Hon'ble Apex Court has affirmed the formula laid down in ***'Sarla Verma's case (supra)*** for the purpose of calculation of deduction towards personal expenses. Hence, deduction towards personal and living expenses would be 1/5th.

11. As a result of the aforesaid discussion, the claimants are held entitled to the following enhanced compensation as detailed in the table hereinunder:

Sr. No.	Head	Compensation
1.	Salary/Income	₹6700/- per month
2.	Future Prospects (40%)	₹9380/-
3.	Deductions (1/5th)	₹7504/- per month
4.	Multiplier of 16	₹ 14,40,768/-
5.	Spousal Consortium	₹ 44,000/-
6.	Filial Consortium (₹ 44,000 x 2)	₹88,000/-
7.	Parental Consortium (₹ 44,000 x 4)	₹ 1,76,000/-
8.	Funeral expenses	₹16,500/-
9.	Loss of estate	₹16,500/-
	Total	**₹ 17,81,768/-**
	Interest	7.5% per annum

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2024.06.04 17:01
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12. Counsel for the appellant insists for fixing the rate of interest @ 9% p.a. from the date of filing of the claim petition till its realisation, however, learned counsel appearing on behalf of respondent No.3-Insurance company submits that the rate of interest should not be over the awarded amount and therefore it should not be more than 6% per annum.

13. I have gone through the judgments cited by the counsel for the appellant and thus, I deem it appropriate to grant the rate of interest @ 7.5% per annum, on amount of compensation, from date of filing petition till its realisation.

14. Thus, in the light of the above discussion, both the appeals preferred by the claimants as well as the Insurance Company are disposed of and the award dated 06.11.2015 passed by the learned Motor Accident Claims Tribunal, Karnal is hereby modified in the above terms as mentioned in para No.11 of this Judgment along with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization with costs.

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

16. Copy of this order be placed on the connected file of this case.

(SANJIV BERRY)
JUDGE

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(i) Whether speaking/non speaking Yes/no

(ii) Whether reportable/non reportable Yes/no

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