IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-207-2016(O&M) with
XOBJC-73-CII-2016(O&M)
Date of decision:-19.1.2023

United India Insurance Company Ltd.

...Appellant

Versus

Salma Begum and others

...Respondents

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

Present: Mr.Vikas Mohan Gupta, Advocate
for the appellant.

Mr.Amaninder Preet Singh, Advocate
for the cross-objectors/respondents-claimants.

Mr.Iranpreet Singh, Advocate
for respondent No.9.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case as per the version of the petitioners/claimants are that on 26.7.2012 Paramjit Khan @ Paramjit Singh son of Narain Khan alias Narain Singh was driving truck bearing registration No.PB-13N-7203 (hereinafter referred to as ill-fated truck); Bhola Singh son of Dalip Singh, resident of Wazidke Kalan was sitting in that truck as conductor; when the truck reached in the area of Rampura Phul at 5:20 a.m., then Umesh Patel @ Raj Nath Patel driving truck bearing registration No.PB-11AM-6885 (hereinafter referred to as the offending truck) in a rash and negligent manner dashed it against truck driven by Paramjit Khan @ Paramjit Singh; resultantly Paramjit Khan @ Paramjit Singh suffered multiple injuries; he was taken to Civil Hospital

Rampura Phul, where he was admitted and from there he was referred to CMC, Ludhiana where remained admitted upto 29.7.2012 and then the deceased was taken to Government Medical College and Hospital, Chandigarh on 13.8.2012, where he succumbed to the injuries on 25.8.2012.

2. Salma Begum – widow, Gurdeep Khan – son, Ravina – minor daughter, Dilaver Khan – minor son, Harbans Kaur – mother (died and her name was struck off vide order dated 10.8.2015) and Narain Khan – father of deceased Paramjit Khan @ Paramjit Singh, all residents of near 22 Acre Scheme Barnala, Tehsil and District Barnala had brought a claim petition under Section 166 of the Motor Vehicles Act before Motor Accident Claims Tribunal, Barnala (hereinafter referred to the as the Tribunal) against the respondents i.e. Umesh Patel alias Raj Nath Patel – driver, Jagjit Singh – owner and United India Insurance Company Ltd. - insurer of truck bearing registration No.PB-11AM-6885 (offending truck), claiming compensation to the tune of Rs.20 lakhs. The petitioners/claimants had also impleaded Prem Singh owner and National Insurance Company Ltd. - insurer of the ill-fated truck as respondents No.4 and 5.

3. Notice of the claim petition was given to the respondents. Respondents No.1 and 2 did not appear despite service, as such were proceeded against ex-parte.

4. Whereas respondents No.3 to 5 put in appearance and offered a contest. In the written reply filed on behalf of respondent No.3 insurance company it had racked up legal objections contending that the petitioners

had no locus standi and cause of action to file the claim petition; the driver of the offending truck was not holding a valid and effective driving licence at the time of accident; the petition had been filed in connivance with respondent No.4 as is clear from the report No.13 dated 27.7.2012 recorded on the statement of deceased Paramjit Khan @ Paramjit Singh; no particulars of the insurance policy of the offending truck covering date of loss had been disclosed; the claimants are not legal heirs of the deceased. On merits respondent No.3 controverted the material assertions in the claim petition denying that the deceased was working as driver with Prem Singh – respondent No.4 and was getting Rs.10,000/- per month as salary or that he had kept milch cattle, in that way, he used to earn Rs.15,000/- per month. According to the answering respondent, the deceased was a drug addict and was in the habit of taking drug/opium, which is clearly mentioned in the discharge summary issued by CMC Hospital, Ludhiana, so a drug addict cannot become a driver or drive a heavy vehicle; as per the medical report, the deceased had died due to drug addiction and not on account of suffering any injury in the road side accident; as a matter of fact, no accident had taken place due to negligent driving of the offending truck, therefore, the claimants are not entitled to get any compensation. The answering respondent prayed for dismissal of the claim petition.

In the written reply filed on behalf of respondent No.4, he had also taken up various legal objections, on merits contending that the deceased had died in the accident cause due to rash and negligent driving of the offending truck by Umesh Patel alias Raj Nath Patel and the petitioners out of greed had filed the claim petition against the answering respondent to extract money. On merits, while denying the material assertions in the claim petition, respondent No.4 contended that deceased had died due to wrongful acts and deeds of the respondent No.1. This respondent also prayed for dismissal of the claim petition.

In the written reply submitted on behalf of respondent No.5, it had also come up with several legal objections on merits denying material assertions in the claim petition coming up with a prayer for dismissal of the claim petition.

5. On the pleadings of the parties, following issues were framed:

1. Whether Paramjit Khan alias Paramjit Singh died due to rash and negligent driving of truck No.PB-11 AM 6865 by respondent No.1? OP Claimants
2. Whether claimants are entitled for compensation regarding such death of Paramjit Khan alias Paramjit Singh? If so to what amount and from which of the respondents? OP Claimants
3. Whether claimants have no locus-standi to file present claim petition? OPR-3.
4. Whether respondent No.1 was not holding valid driving licence at the time of alleged accident? OPR.
5. Relief.

6. To prove their case, petitioner No.1 Salma Rani got her statement recorded as PW1. In addition the claimants examined Bhola Singh as PW2, Pritpal Singh as PW3. After tendering certain documents,

the claimants closed the evidence.

In rebuttal, counsel for respondent NO.3 tendered in evidence discharge summary of Paramjit Khan as Ex.R2, copy of insurance policy as Ex.R3, copy of driving licence of respondent No.1 as Ex.R4 and closed the evidence on behalf of respondent No.3.

Whereas counsel for respondent No.5 tendered in evidence copy of insurance policy as Ex.R1 and closed the evidence.

Respondent No.4 had not adduced any evidence despite being granted opportunity to do so.

7. After hearing arguments, the Tribunal decided issues No.1 and 2 in favour of the petitioners and against the respondents, issues No.3 and 4 were decided against respondent No.3. Resultantly, vide award dated 28.9.2015 the claim petition was accepted and compensation of Rs.9,28,600/- with interest at the rate of 9% per annum from the date of filing of the petition till actual realization of that amount was awarded to the claimants, payable by respondents No.1 to 3 jointly and severally. The manner in which the amount of compensation was apportioned between the claimants was also given in the impugned award.

8. The respondent No.3 – insurance company of the offending truck felt that the compensation was wrongly awarded to the claimants that too on higher side and it has filed an appeal before this Court, notice of which was given to the respondents. Respondents No.1 to 5 have filed cross-objections seeking enhancement of compensation.

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

10. Learned counsel for the appellant/insurance company has submitted that no FIR with regard to the accident had been lodged and only report No.13 dated 27.7.2012 was entered in the roznamcha of Police Station Rampura Phul on the basis of statement of deceased Paramjit Khan @ Paramjit Singh; the Tribunal has wrongly relied upon statement of PW2 Bhola Singh alleged conductor of the illfated truck and in absence of the other cogent and convincing evidence in the form of statement of the attending doctor or medical documents to show that deceased had suffered injuries in the motor vehicular accident, the Tribunal fell in error in returning a finding that the accident had taken place due to rash and negligent driving of the offending truck by respondent No.1 Umesh Patel alias Raj Nath Patel when the evidence brought on file by the claimants suggested otherwise that the deceased, who was a drug addict had died due to over consumption of the drug and compensation was wrongly granted to the claimants.

11. Whereas, it is the case of the claimants that the deceased had suffered injuries in the motor vehicular accident caused on account of rash and negligent driving of the offending truck by respondent No.1 to which he had succumbed, therefore the driver, owner and insurance company of the offending truck were rightly held liable to pay compensation to the claimants.

12. After considering the rival contentions, I find little merit in the stand taken by the insurance company and submissions made by learned counsel representing the appellant – insurance company in that regard.

13. Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there. The Tribunal has to reach a conclusion as to whether the accident in which the victim had suffered injuries or lost his life had taken place on account of some wrongful act on the part of the motor vehicle. In this case the involvement of the offending truck in the accident stands adequately proved. Copy of DDR No.13 dated 27.7.2012 Ex.P1 points out towards Paramjit Khan @ Paramjit Singh having suffered injuries in a motor vehicular accident. Though Paramjit Khan @ Paramjit Singh injured is said to have stated that the accident had taken place per chance and suddenly but then that statement has not been proved on record in accordance with law. The police officer, who had recorded the statement was not examined by the respondents to show that the injured had made the statement voluntarily without any threat or coercion or that he was in a fit mental state to make the statement. None of the attending doctor has been examined to show that injured was in a fit state of mind to make the statement and he was not under influence of any sedative or medicine given to him at that time. Therefore, this report is of little help to the respondents.

14. On the other hand, the claimants had examined Bhola Singh as PW2, who is said to have been travelling in the truck in question as a conductor. He in his affidavit Ex.PW2/A has categorically stated that the

accident had taken place due to rash and negligent driving of offending truck by respondent No.1 Umesh Patel @ Raj Nath Patel, who while driving it at a high speed dashed it in a truck driven by Paramjit Khan @ Paramjit Singh. He was cross-examined at length on behalf of respondents but he stuck to his guns and his credibility could not be shaken on any material point. No reason has been suggested or proved prompted by which he may be have come forward to depose falsely in favour of claimants and against respondents. His testimony was rightly relied upon by the Tribunal. The statement on oath of PW2 Bhola Singh recorded in the Court is definitely of more value and is to be taken precedence over DDR. Neither the driver of the offending truck stepped into the witness box to say that he was not at fault in happening of the accident nor the owner of that truck got his statement recorded to show that the truck belonging to him driven by respondent No.1 was not involved in the accident. Therefore, the evidence adduced by the claimants has gone unrebutted.

15. Learned counsel for the respondents/claimants has referred to judgment i.e. ***Virat Sama Versus Mohan Lal and others1994(1) PLR 82*** wherein a Single Judge of this Court had observed that FIR is often lodged in haste and the same cannot be substituted for the evidence giving exhaustive version of the occurrence and furthermore the statements before the Tribunal are made on solemn affirmation whereas the FIR is never lodged on solemn affirmation.

Counsel for the respondents/claimants has further pressed into service judgment ***Anita Sharma and others Versus The New India***

Assurance Co. Ltd. and another, 2021 AIR (Supreme Court) 302 wherein it was stated that standard of proof in motor accident matters is one of the preponderance of probabilities rather than beyond reasonable doubt.

16. Therefore, the Tribunal was justified in returning the finding that the respondent No.1 was author of the accident by rash and negligent driving of the offending truck and no interference therewith is called for.

17. No other argument was advanced by learned counsel for the appellant/insurance company.

18. Whereas learned counsel for the claimants/cross-objectors has contended that the compensation awarded is on the lower side because no addition was made towards income of the deceased on account of future prospects.

19. After going through the award, I find force in such contention.

The age of the deceased at the time of his death in the accident was 42 years. The Tribunal had taken his notional income as Rs.6,000/- per month, which of the driver cannot be said to be on higher side. However, the Tribunal has not made any addition towards future prospects. As is natural, income of a person gets enhanced and increased with passage of time. Detailed formula for addition of income towards future prospects is given in ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***. In terms of the same, if the deceased was self employed or having fixed monthly income and was aged between 40 to 50 years, then 25% of the his monthly income is added towards future prospects. Doing that the monthly income of the deceased is assessed to be Rs.7,500/-(6000 + 1500).

The Tribunal has wrongly deducted 1/3rd amount towards living and personal expenses of the deceased. Therefore, deducting 1/4th of the amount towards personal and living expenses of the deceased, in view of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil) 77***, the monthly dependency of the claimants comes out to Rs.5,625/- (7500 - 1875), annual to be Rs.67,500/-(5,625 x 12). Considering the age of the deceased, the multiplier 14 was rightly applied by the Tribunal. Doing that the compensation amount is worked out to Rs.9,45,000/- (67,500 x 14).

The Tribunal has rightly awarded an amount of Rs.2,36,000/- to the claimants on account of medical expenses. Adding that amount, the compensation comes out to Rs.11,81,000/-.

The Tribunal has further awarded an amount of Rs.10,000/- towards funeral expenses and Rs.10,000/- to petitioner No.1 Salma Rani as consortium.

However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

Doing that the compensation comes out to be Rs.14,11,000/- (11,81,000+40000+40000+40000+40000+40000+15000+15000).

20. In this way, the enhanced amount comes out to Rs.4,82,400/- (1411000 – 928600).

21. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,82,400/-. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants in cash and with regard to deposit in the form of FDR shall stand modified proportionately.

22. With such modification, XOBJC-73-CII-2016 filed by the claimants are allowed partly with costs.

23. Consequently, FAO-207-2016 filed by the appellant/insurance company stands dismissed.

Since the main appeal stands dismissed and cross-objections allowed partly, the miscellaneous application(s) if any, stand disposed of accordingly.

19.1.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No