

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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FAO No.4961 of 2014 (O&M)
DATE OF DECISION : 09th JANUARY, 2023

United India Insurance Company Limited

.... Appellant

Versus

Prasanta Kumar Bhattacharya and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.P. Gupta, Advocate and
Mr. Shubham Gupta, Advocate,
for the appellant.

Mr. S.K. Tripathi, Advocate,
for respondent Nos.1 and 2.

Mr. Rajesh Lamba, Advocate,
for respondent Nos.3 and 4.

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RAJBIR SEHRAWAT, J. (Oral)

CM-9207-CII-2017

This is an application for granting permission to produce copy of judgment of the criminal case by way of additional evidence.

For the reasons mentioned in the application, the same is allowed and the copy of judgment of the criminal case, by way of additional evidence, is taken on record, subject to all just exceptions.

Main Appeal

The present appeal has been filed by the appellant-Insurance Company against the award dated 07.04.2014 passed by the Motor Accident Claims Tribunal, Gurgaon (for short, the Tribunal), whereby an

amount of ₹17,63,000/- has been awarded as compensation with interest @ 7.5% per annum on account of death of Pratik Kumar Bhattacharaya.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts giving rise to the present appeal are that on 09.06.2012, Pratik Kumar Bhattacharaya and his friend were coming from Airport Delhi on a vehicle bearing no.HR-21-H-0963, after dropping his brother. They reached at Polytechnic College, Manesar Ghati, over bridge, at about 3.30 a.m. The truck bearing No.HR-55H-5599 was parked there on the wrong side without indicator or the stopping instruments. Despite the fact that, the car was being driven at a slow speed, because of no indication of the said truck, the Maruti car struck into the said truck. Due to impact of the accident, Pratik Kumar Bhattacharaya suffered serious injuries. He was taken to Sun Rise Hospital, where he was declared dead. The other occupant of the car, namely, Arun Bhatt remained admitted in Life Care Hospital, Manesar. With these assertions, the claimants, who are the father and mother of the deceased Pratik Kumar Bhattacharaya filed the claim petition. It was asserted in the said claim petition that the deceased was 24 years of age and was employed in M/s DELL International Services Pvt. Ltd., Vipul Tech. Square, Opp. Central Bank near Golf, Sector-43, Gurugaon as Software Engineer and was earning ₹40,000/- per month. It was also asserted that the deceased was the sole bread earner of the family. Accordingly, an amount of ₹30.00 Lacs was claimed as compensation.

To contest the claim petition, the respondents had filed their separate written statement. Respondent Nos.1 and 2 had taken the preliminary objections qua the maintainability of the claim petition and some other routine objections. On merits, it was asserted that no accident had taken place with the alleged offending truck named in the claim petition. The respondent No.3, the present appellant, had filed a separate written statement and had asserted that the driver of the offending vehicle was not having any valid and effective driving licence at the time of accident. Furthermore, the insurance company was not informed about the accident by the driver or the owner. It was also asserted that the claim petition is not maintainable because the claimants are not the third party under the Motor Vehicle Act, 1988.

To prove their case, the claimant No.1, who is father of the deceased appeared as witness; and had deposed as to the facts involved in the accident. Still further, the claimant No.2, the mother of the deceased, also appeared as a witness and deposed on similar lines. Besides that, the Regional Medical Officer and the doctor, who conducted the post-mortem of the deceased, as well as, the Ahlmad of the Court were examined to prove that the driver of the offending vehicle was facing the criminal charge in FIR No.114 of 2012 under Sections 283 and 304-A IPC registered at P.S. Bilaspur. On the other hand, the respondents opted not to lead any evidence; whatsoever.

After considering the material on record, the Tribunal assessed the income of the deceased as ₹10,000/- per month. Taking the age of the deceased to be 24 years, multiplier of 18 has been applied. Since, the deceased was un-married, therefore, deduction of 50% was

applied on account of the personal expenses. Beside this, the Tribunal has awarded the benefit of future prospects at the rate of 50% of the assessed income. Accordingly, the loss of dependency of the deceased to the claimants on account of death of deceased has been assessed. Beside this, the claimants have been awarded an amount of ₹1.00 Lac on account of love and affection and ₹25,000/- for funeral expenses and an amount of ₹17,700/- on account of medical expenses. Thus, a total amount of ₹17,63,000/- has been awarded.

Arguing the case, learned counsel for the appellant has submitted that there is no eye-witness examined in the case, therefore, there is no proof of negligence on the part of the alleged offending vehicle; on the file. The counsel for the appellant has submitted that it was the deceased who was himself responsible for the accident in question. The Tribunal has relied upon only the pendency of the criminal case against the driver of offending vehicle. However, in the criminal case, the driver of the offending vehicle has since been acquitted. Therefore, it is a case is of no evidence at all; with regard to negligence. The counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Lachoo Ram and others Versus Himachal Road Transport Corpn., 2014 (1) R.C.R. (Civil) 926***, to support his argument that if there is no proof of negligence then no compensation can be awarded. The counsel has further submitted that even the benefit of future prospects have wrongly been granted in violation of judgment rendered by Hon'ble the Supreme Court in the case of ***National Insurance Company Limited Versus Pranay Sethi and others, (2017) 16 SCC 680***. Beside this, even the benefit of love and affection has wrongly

been granted. Rather, in terms of the judgment of Hon'ble the Supreme Court rendered in the case of ***Pranay Sethi*** (supra), the claimants could have been awarded only the consortium at the rate laid down by Hon'ble the Supreme Court. Even the funeral expenses have wrongly been awarded on higher side as ₹25,000/-whereas, it could not have been more than ₹15,000/- as per the judgment of Hon'ble the Supreme Court rendered in the case of ***Pranay Sethi*** (supra). Accordingly, it is submitted that the respondents are not entitled to any compensation at all. In any case, the compensation awarded to the claimants has to be reduced to bring the same in terms of the judgment rendered by Hon'ble the Supreme Court in the case of ***Pranay Sethi*** (supra).

On the other hand, learned counsel for the respondents/claimants has submitted that the compensation has otherwise been granted on the lower side, however, since the claimants have not filed any appeal, therefore, he is restricting to answering the submissions made by the counsel for the appellant. The counsel has submitted that so far as the negligence is concerned, there is evidence on file which is sufficient to show that the truck insured by the appellant was responsible for the accident. It has come on record that the offending truck was parked on wrong side of the road and there were no indicator lights or any physical indicator put there to warn the vehicles coming from either side. The father of the deceased has duly deposed on that line. Moreover, the highway patrol had got the deceased admitted to the hospital, therefore, it is obvious that the persons performing public duty had found the deceased as having met with an accident on account of the stationery truck parked by the driver of the offending vehicle. However, the counsel

for the respondents has not been able to contest the claim of the appellant/insurance company to the extent that the future prospects have wrongly been granted to the claimants and that even the amount granted to the claimants on account of love and affection and funeral expenses is on the higher side as compared to the amounts permitted by the judgment of Hon'ble the Supreme Court rendered in the case of ***Pranay Sethi*** (supra).

Having heard learned counsel for the parties and having perused the case file, this Court does not find any substance in the arguments raised by the counsel for the appellant qua denial of compensation to the claimants. The claimant No.1 has duly appeared before the Tribunal. He has deposed before the Tribunal that the accident had taken place with the truck in question and that it was standing there without any indication and on wrong side. Moreover, as per the record, the deceased was taken to the hospital by none other than the Highway Patrol. These facts have been deposed by the father of the deceased, when he appeared as witness before the Tribunal. However, the said witness has not been cross-examined by the respondents on these material aspects. In fact, the cross-examination of the said witness is totally silent on all other aspects of the accident except the income aspect of the deceased. Therefore, by any means, the appellant/insurance company cannot raise an argument that there is no evidence on the file to show the negligence of the offending truck.

Although the appellant had pleaded in written statement and the counsel for the appellant has submitted that it was the deceased who was himself responsible for the accident in question, however, since the

respondent/insurance company has not led any evidence to support the pleadings taken in the written statement, therefore, this Court cannot accept the said plea. Needless to say that the insurance company cannot be permitted to take frivolous plea just to defeat the claim petition filed by the family left in distress on account of death of the earning member of the family. Moreover, as per the written statement filed by the respondents, they had taken a plea that the accident had not taken place with the offending truck. However, the driver or owner of the truck has not shown the courage even to appear as a witness before the Tribunal; so as to face the cross-examination by the claimants. Not only that, even the insurance company has not led any evidence on file to substantiate their plea that it was the deceased who was negligent or that the truck insured by them was not negligent in the accident. Therefore, the assertion raised by the counsel for the appellant is totally non-supported by any material on record of the case.

Although, the appellant/insurance company had filed an application for additional evidence to place on record the judgment delivered by the Criminal Court in the criminal case to assert that even in the criminal case, the driver of the offending truck has been acquitted, however, this Court has already held in the case of ***United India Insurance Company Limited, Panipat Versus Mamta and others in FAO No.5296 of 2022, decided on 06.01.2023***, that the criminal case is not a relevant aspect in decision of the claim petition in an accident case. The aspect of the criminal case can be used only as a collateral fact to the limited extent of supporting the fact that the accident had in fact taken place. Beyond that, any aspect of the criminal case is totally irrelevant.

Therefore, the arguments raised by the counsel for the appellant is totally irrelevant for the purpose of the present case. The Tribunal is required to decide the claim petition only on the basis of evidence led before it in the claim petition, without being effected by any external fact which is not proved before it. Moreover even if, that aspect of the criminal case is taken into consideration, the acquittal in criminal case is of no help to the case of the appellant. A perusal of the judgment of the Criminal Court in criminal case shows that the driver of the offending truck has been acquitted on account of lack of evidence because even the author of the FIR Arun Bhatt had not appeared as a witness before the Criminal Court. However, the said Arun Bhatt had not appeared as a witness even in the claim petition. Therefore, it is obvious that Arun Bhatt was not interested to involve himself in any manner with the issues involved in the present case. Despite being an injured, he choose not even to file a claim petition. Therefore, it is obvious that the acquittal of the driver of the offending truck is not on merits of the case, rather, has happened on account of non deposition before it by the relevant but reluctant witness.

However, this Court finds substance in the arguments raised by the counsel for the appellant to the extent that the benefit of future prospects have been granted in excess to what is permissible as per the judgment rendered by Hon'ble the Supreme Court in the case of ***Pranay Sethi*** (supra). Therefore, the benefit of future prospects which has been granted to the claimants @ 50% is required to be reduced to 40%. In a similar manner, the benefit granted to the claimants on account of funeral expenses has to be readjusted by limiting it to the amount of ₹15,000/- as per the judgment rendered by Hon'ble the Supreme Court in the case of

Pranay Sethi (supra). Beside this, instead of granting an amount of ₹1.00 Lac on account of love and affection, the claimants would be awarded an amount of ₹44,000/- each on account of loss of consortium.

Ordered accordingly.

In view of the above, the claimants are held entitled to the compensation as below:-

Sr. No.	Head	Amount assessed
1	Income	₹10,000/- per month
2	Deduction @ 50%	₹10,000 x 50% = ₹5,000/-
3	Future prospects @ 40%	₹5000 X 40% = ₹2,000/- 5,000 + 2,000 = ₹7,000/- per month ₹7,000 x 12 = ₹84,000/- per annum
4	Multiplier @ 18	₹84,000 x 18 = ₹15,12,000/-
5	Loss of Consortium @ ₹44,000 each	₹88,000/-
6	Funeral Expenses	₹15,000/-
7	Medical expenses	₹17,700/-
8	Total	₹16,32,700/-

The present appeal filed by the appellant/insurance company is partly allowed to the extent mentioned above. The interest part would remain the same.

All pending miscellaneous application(s) stands disposed of as such.

09th JANUARY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes