2023:PHHC:073704

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 2403/2016(O&M)

Date of decision: 18.05.2023.

The Oriental Insurance Company Ltd.

………………Appellant

Vs.

Satish Kapoor and others

………………Respondents

FAO 4972/2017(O&M)

Satish Kapoor and another

………………Appellants

Vs.

Amit Kumar and another

………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. RK Bashamboo, Advocate for appellant- Insurance Company

Mr. Sanjay Verma, Advocate for the respondents/claimants

Nidhi Gupta, J.

By this common order I shall dispose of two cross appeals bearing FAO No.2403/2016-filed by the Insurance Company; and FAO No.4972/2017-filed by claimants. Both appeals are being disposed of by common order as facts, arguments and questions of law involved in both the appeals are identical. Both the appeals arise from one Award dated 29.1.2016 passed by Motor Accident Claims Tribunal, Kaithal, (hereinafter referred to as 'the Tribunal') in claim petition bearing MACT Case No.RBT 32 of 2015 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

2. For the sake of convenience parties are being referred to by their litigative status before the Tribunal.

3. Vide impugned Award dated 29.1.2016 ld. Tribunal has awarded compensation of Rs.10,22,710/- to the claimants along with interest @ 9% per annum from the date of filing of the claim petition till its realization. Ld. Tribunal granted compensation as above on account of death of Geeta Kapoor. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased-Geeta Devi had died due to injuries suffered by her in motor vehicular accident that took place on 16.7.2014 due to rash and negligent driving of Car bearing registration No. UP-19A-9699 / at the time of accident temporary number of the said vehicle was HR-99SA-TP0036 (hereinafter referred to as 'the offending vehicle'), which was owned and driven by respondent no.1, and insured by respondent no.2 in the claim petition. Liability to pay the compensation was joint and several. Claimants were the widower and major son aged 32 years, of the deceased-Geeta Kapoor.

4. Ld. counsel for the Insurance Company assails the Award on the ground that under Section 166 of the Act in order to prove the negligence and involvement of the offending vehicle, it is necessary to examine an eyewitness. It is submitted that in the present case no eyewitness has been examined by the claimants, and although this fact has been acknowledged by the ld. Tribunal itself yet, despite this lacuna, ld. Tribunal has not doubted the

veracity of the story put forth by the claimants and has allowed the claim petition.

5. It is further submitted that in the present case FIR has been registered on the basis of hearsay. It is submitted that FIR was registered on the basis of statement of claimant no.1 and that it is case of claimant no.1 that he had received information regarding the accident from one Vijay Kumar. It is submitted that however, said Vijay Kumar has not been examined; and therefore, even the FIR has been registered on the basis of hearsay as claimant no.1 was not present at the spot. It is submitted that only because the respondent no.1/ driver of the offending vehicle, was facing criminal trial is not sufficient to establish rash and negligent driving on his part. It is submitted that therefore, issue no.1 has been wrongly decided and the same is liable to be set aside.

6. It is reiterated that evidence of claimant no.1 is hearsay evidence as he was not present at the spot and under Section 166 of the Act law requires that involvement of the vehicle as well as rash and negligent act of the driver has to be proved. It is further submitted that in such circumstances the non-appearance of the driver of the offending vehicle, is neither fatal nor adverse inference can be drawn against the respondents. The claimants have to prove their case independently and the claimants' case has to stand on its own legs and adverse inference cannot be drawn against respondent no.1.

7. In support, ld. counsel relies upon judgments of this Court in **National Insurance Company Limited v. Babloo, Law Finder Doc Id # 695809** to submit that this Court has held in the above-mentioned judgment

that under Section 166 of the Act the claimant is under an obligation to establish that the accident had taken place due to rash and negligent driving of offending vehicle.

8. Ld. counsel for the Insurance Company further refers to **Ram Karan v. Zile Singh, (P&H) : Law Finder Doc Id # 14175**, and to **Oriental Insurance Company Limited v. Meena Variyal, (SC): Law Finder Doc Id # 126859** to submit that even if the occurrence of the accident is established, rashness on the part of the driver cannot be held to be proved. To prove the rash and negligent driving on the part of the driver of the offending vehicle, witness has to be produced. It is submitted that, admittedly, in the present case, no eyewitness has been produced and therefore, claim petition could not have been allowed.

9. As regards quantum it is submitted by the ld. counsel for the Insurance Company that claimant no.2 being major son of the deceased, ld. Tribunal has correctly made a deduction of 50% towards personal expenses. It is submitted that income has been assessed correctly in the facts and circumstances of the case. It is submitted that however, amount of Rs.1.75 lacs granted under the conventional heads is on the higher side. It is fairly admitted that future prospects @ 10% need to be added.

10. In response it is submitted by the ld. counsel for the claimants that it has been categoric case of the claimants as narrated in the claim petition that on 16.7.2014 the deceased was coming back home on a Moped at about 2.30 p.m. from the school where she used to teach. When she reached near Killa Panipat, offending car being driven by respondent no.1(in the claim petition) in a rash and negligent manner came and struck against the Moped

of the deceased from behind. As a result of the impact the deceased fell on the road and sustained serious and multiple injuries. Respondent no.1 ran away from the spot. However, one passerby, namely Vijay Kumar took the deceased to Prabhakar Hospital, Panipat from where she was referred to Prem Hospital, Panipat. Thereafter, said passerby Vijay Kumar informed the claimant no.1 about the accident. During the treatment deceased succumbed to her injuries. Therefore, FIR No.523 dated 17.7.2014 under Sections 279,337,427 and 304-A IPC was registered at PS Model Town, Panipat on the statement of claimant no.1. It is submitted that accordingly, the factum of accident cannot be denied and has to be taken as proved.

11. It is further submitted that eyewitness Vijay Kumar may not have appeared before the ld. Tribunal but he has very much appeared in the criminal proceedings against respondent no.1. It is stated that due investigation was carried out by the police and even relevant officers were examined and even report under Section 173 of Code of Criminal Procedure-Ex.PC has been duly proved on record. It is submitted that in view of these incontrovertible facts on record, factum of accident and rash and negligent driving on part of respondent No.1, cannot be doubted.

12. As regards quantum, it is submitted that deceased was aged about 51 years at the time of her death and was a Teacher at SD Modern Senior Secondary School, Panipat and was also running a Tuition Centre. It is submitted that she was earning Rs.25,000/- p.m. from both the said occupations.

13. It is further submitted that ld. Tribunal is in error in making deduction of 50% towards personal expenses as both the claimants were

dependent on the income of the deceased. It is further submitted that deceased was 51 years of age and an addition of 15% ought to have been made towards future prospects.

14. No other argument has been raised.

15. Heard ld. counsel.

16. It is established position in law that in a claim petition under Section 166, strict proof of the accident as required in a criminal trial is not required to be established. This Court in **Renu Devi v. Mohammad Yunis (P&H) : Law Finder Doc Id # 446388**, has held that even in the absence of eyewitness to the occurrence or the first informant who lodged the FIR, the Tribunal has to weigh the other materials produced on record to determine the negligence on the part of the driver of the offending vehicle.

17. In the present case admittedly Vijay Kumar eyewitness informed the claimant no.1 about the accident, whereupon claimant no. 1 lodged the FIR. Admittedly, in pursuance to registration of FIR and investigation carried out by the police, respondent no.1 is facing trial at Panipat. Respondent no.1 has not filed any application for cancellation, nor has stepped into witness box to deny his involvement or negligence in causing the accident. Moreover, summary proceedings are conducted under the Act and the Tribunal is not required to conduct a criminal trial and therefore, the standard of proof beyond reasonable doubt is not required to be applied. In such a similar situation this Court in **Raju v. Sukhwinder Singh, (P&H) : Law Finder Doc Id # 123367** has held that if the driver of the offending vehicle does not come forward to deny his negligence, then adverse inference is to be drawn in favour of the claimants and he is presumed to be negligent.

This position has been reiterated by this Court in **MAGMA HDI General Insurance Co. Ltd. v. Nirmala Devi, (Punjab And Haryana) : Law Finder Doc Id # 1179732** to hold that when driver of the offending vehicle is not coming before Court regarding his false implication and has not even stepped into witness box to deny his involvement in the case then in such a scenario an adverse inference is to be drawn against him. Again, in case of **National Insurance Company v. Smt. Pushpa Rana, (Delhi): Law Finder Doc Id # 199886,** the Delhi High Court has held that FIR, charge sheet against the driver, and recovery memo were sufficient proof to reach the conclusion that the driver was negligent. It was further held that proceedings under the Act are not alien to civil suit proceedings hence, strict rules of evidence need not be followed and the Insurance Company was held liable to pay the compensation.

18. Accordingly, in view of plethora of judgments as cited above, the legal position is clear. In the present case there is sufficient evidence in view of FIR, report under Section 173 Cr.P.C., and in the absence of any denial or rebuttal by respondent no.1/driver of the offending vehicle, to hold that rash and negligent driving by respondent no.1 is established on record for the purposes of the Act. Furthermore, in this scenario, the Insurance Company can derive no benefit from the judgments cited on its behalf, which are even otherwise distinguishable in the facts and circumstances of the case.

19. As regards quantum, it is pleaded case of the claimants that the deceased was earning Rs.25,000/- per month. However, as per Salary Certificate-Ex.PD, salary of the deceased was shown as Rs.8763/- per month and Provident Fund deduction of Rs.780/- per month. Income Tax Return

Mark B was rejected as the same was not proved and as it was filed after the death of the deceased. Admittedly, no evidence whatsoever has been led by the claimants in support of their contention that the deceased was running a Tuition Centre. Even before this Court, claimants have produced nothing whatsoever to show that the deceased was running a Tuition Centre. Accordingly, it is my considered opinion that ld. Tribunal correctly took income of the deceased as Rs.9543/- rounded off to Rs.9550/- per month.

20. Admittedly, claimant no.2 is major son of the deceased aged 32 years. Nothing has been placed on record on behalf of claimant no.2 to prove his pecuniary dependence upon the income of the deceased. Thus, as per established position in law, he cannot be taken as a dependent upon the deceased. Even otherwise, it has been held by the Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. Vinish Jain & Others Law Finder Doc ID # 977386** and this Court in **(P&H) Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136;** and **Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,** that major sons of the deceased are not entitled to compensation. Therefore, ld. Tribunal correctly made a deduction of 50% towards personal expenses. Claimant no.1 being a chronic heart patient was correctly held to be dependent upon the deceased. Medical expenses of Rs. 2,17,410/- incurred by the claimants were proved by PW2 Karambir and duly reimbursed by the ld. Tribunal.

21. In my view, the reasoning of the ld. Tribunal that the deceased being 52 years of age at the time of death and therefore, addition towards

future prospects was not required to be made is incorrect. As per judgment of Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, between ages of 50 to 60 an addition of 10% towards future prospects is to be made. Further, Ld. Tribunal has correctly applied multiplier of 11; and as per judgment of the Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & others, C.A.No.2410-2412/2023;** reiterated by the Hon'ble Supreme Court in **Mehmooda Bee and others v National Insurance Co. Ltd., SLP (C) No.16767 of 2022** and **Bebi Giri vs. National Insurance Co. Ltd., Civil Appeal No.6551 of 2022 (SLP(C) No.8768 of 2018,** a total sum of Rs.77,000/- only is payable under the conventional heads.

22. In view of the above discussion, the compensation payable in this case is reworked as under:-

Sr.No.	Head	Awarded by Tribunal (Amount in Rupees)	Reworked in Appeal (Amount in Rupees).
1	Income	9550/- per month	9550/- per month
2	Future prospects	Nil	@ 10% (955/-) = 10,505/-
3	Deduction	50% =4775/-	@ 50% = 5252/-
4	Annual income	57300	63,024/-
4	Multiplier	11	11
5	Total dependency	57300x11=6,30,300/-	63,024x11=6,93,264/-
5	Conventional heads	1,75,000/-	77,000/-
6	Medical expenses	2,17,410/-	2,17,410/-
7.	Total	9,72,710/-	9,87,674/-
	Rate of interest	9% per annum	9% per annum

23. Appeals stand disposed of in above terms.

24. Ratio of apportionment and manner of disbursement of compensation, as determined by the Tribunal shall remain unchanged.

25. A copy of this order be placed on the file of FAO No.4972/2017.

26. Application(s), if any, stand disposed of.

18.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**