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

**Reserved on: 17.11.2022
Pronounced on: 15.02.2023**

(1) FAO-2434-2016 (O&M)

Reliance General Insurance Company Ltd. ......Appellant.

vs.

Nisha Sachdeva and ors. ......Respondents.

(2) FAO-4831-2016 (O&M)

Nisha Sachdeva and others ......Appellants.

vs.

Tahir Hussain Khan and ors. .....Respondents.

CORAM: - HON'BLE MR JUSTICE SANJIV BERRY

Present: - Mr. Sanjeev Kodan, Advocate,
for the appellant in FAO-2434-2016.

Mr. Rishav Jain, Advocate with
Mr. Varun Jain, Advocate,
for respondents No. 1 to 4 in FAO-2434-2016 and
for appellants in FAO-4831-2016.

Ms. Varuna Singh, Advocate,
for respondents No. 5 and 6 in FAO-2434-2016 and
for respondents No. 1 and 2 in FAO-4831-2016.

SANJIV BERRY, J.

By this order, I shall dispose of the above mentioned two appeals, **FAO-2434-2016,** preferred by **Reliance General Insurance Company Ltd,** for setting aside the Award dated 30.01.2016 passed by the Motor Accident Claims Tribunal, Sonepat, (for short, 'the Tribunal') and

FAO-4831-2016, preferred by **Nisha Sachdeva and others**, seeking modification of the Award passed by the Tribunal on 30.01.2016.

2. Brief facts of the case are that the claimants- Nisha Sachdeva and others, filed a claim petition stating therein that on 01.10.2012 at about 6.00 A.M., Naveen Kumar (since deceased) along with two others- Hitesh Munjal and Nitin Kumar, were going from Sonepat to Delhi in a Wagon-R car bearing Registration No. HR-10L-4373. The said car was being driven by the deceased-Naveen Kumar. When they reached near the village Bakoli Bus stand, a Tata Tempo-709 bearing registration No. HR-63-A-5492 (offending vehicle) driven by respondent No. 1, Tahir Hussain Khan, in a rash and negligent manner suddenly stopped his Tata Tempo on the extreme right side of the road near the divider and the deceased- Naveen Kumar, after applying the brakes, tried his best to avoid the accident but the Wagon-R Car struck the left rear portion of the offending vehicle. Due to the said accident, all the occupants of the car sustained multiple and grievous injuries. The driver of the offending vehicle ran away from the spot after leaving the offending vehicle at the spot. All the three injured namely Naveen Kumar, Hitesh Munjal and Nitin Kumar, were taken to the Civil Hospital, Narela. Hitesh Munjal, one of the injured, was declared brought dead whereas the other two injured were taken to Max Super-Specialty Hospital in Shalimar Bagh, where Naveen Kumar was also declared brought dead. Hence, the claimants are wife, minor children and mother of the deceased-Naveen Kumar.

3. In the claim petition, it was averred that all the claimants were

dependent on the deceased- Naveen Kumar. He was 34 years of age at the time of death and was earning ₹ 35,000/- per month from his tour and travel agency in the name and style of Cite Gujrat at Jamuna Bazar, New Delhi.

4. The claim petition was contested by the respondent No. 1 and 2 who, *inter alia,* raised preliminary objections regarding maintainability, cause of action, locus standi of the petition. It is pleaded that respondent No.1 has been falsely implicated in this case by the claimant in collusion with the local police as the accident took place due to rash and negligent driving of deceased Naveen Kumar as the vehicle of the answering respondent was parked at berm (*katcha)* of the road with all kind of indicator/sign of vehicle parking.

5. The respondent No.3-Insurance Company before the learned Tribunal *inter alia*, contends that no alleged accident took place with the Tata Tempo in question and the same had been falsely involved by the claimants in collusion with the police in order to get compensation from the respondents. It was also submitted that respondent No.1 was not having a valid and effective driving licence at the relevant time and the vehicle in question was not having a valid registration certificate, route permit & fitness certificate.

6. Learned Motor Accident Claims Tribunal, Sonepat had framed following issues:-

1. *Whether the death of Naveen Kumar son of Subhah Chand Sachdeva is the result of accident which took place on 01.10.2012 due to rash and negligent driving of Tata Tempo bearing 708 bearing regd. No. 63-A-5492? OPP*

2. *If issue No.1 is proved, to what amount of compensation the petitioners are entitled to and from whom?OPP*
3. *Whether respondent No.1 was not holding a valid driving licence at the time of accident and the offending vehicle had violated the terms and conditions of the policy, if so, its effect? OPR-3*
4. *Relief.*

7. Learned Tribunal, after hearing the case has held that accident was result of rash and negligent driving of offending vehicle by its driver respondent No.1. Deceased-Naveen Kumar was 33-34 years of age at the time of accident and in the business of tour and travels. As per the Income Tax Returns (Ex. P-6) of the deceased, his total annual income was ₹1,58,000/- and ¼ deduction for self expenses was made. His annual dependency was held to be ₹ 1,18,500 and after multiplier of 16 was applied as per the law laid down by Hon'ble Apex Court in ***Sarla Verma and others vs. Delhi Transport Corporation and Another, 209 ACJ 1298***. Claimants were awarded total compensation amount of ₹23,53,300/- along with interest @ 7.5% per annum and held respondents liable to pay jointly and severally the awarded compensation amount. A brief description of compensation awarded by the learned Tribunal is as under:-

Sr. No.	Heads	Compensation Awarded
1.	Income	₹ 1,58,000/
2.	Annual dependency of the deceased 1/4	₹1,18,500/-
3.	After applying of multiplier of 16	₹ 18,96,000/- (1,18,500 x16)
4.	Funeral expenses	₹ 25,000/-
5.	Loss of consortium	₹ 1,00,000/-
6.	Loss of love and affection to	₹ 1,00,000/- each

	two minor children	
7.	Loss of estate	₹ 1,00,000/-
	Medical expenses	₹32300/-
8.	Grand Total	₹ 23,53,300/-
	Interest	7.5% per annum.

8. Learned counsel for the Insurance Company contends that learned Tribunal wrongly held that the accident was result of sole, rash and negligent driving of offending vehicle i.e. HR-63-A-5492 by its driver Tahir Hussain Khan, as per the version of the FIR, Challan and site plan the car bearing registration HR-10L-4373 driven by the deceased Naveen Kumar hit from behind the offending vehicle. The distance between the car of the eye witness and the offending vehicle was about 65" to 70" and the distance between the car of eye witness and the car of the deceased was about 40 feet, meaning thereby there was a distance of about 25-30 feet between the offending vehicle and the car of the deceased. If the deceased was on moderate speed, he could easily control the car and avoid accident. This shows that the deceased was also negligent for causing accident and therefore, it is a case of contributory negligence.

9. He further contends that annual income of the deceased was taken as ₹1,58,000/- on the basis of income Income Tax Return, Ex. P-6 without deducting the income tax. ₹1,00,000/- awarded for loss of estate ₹2,00,000/- awarded to two minor children for love and affection is on higher side. Multiplier of 15 is to be applied instead of 16 and rate of interest of 7.5% per annum is wrongly awarded where as is to be 6% as per ***Sarla Verma's case (supra)***.

10. On the other hand, learned counsel for the appellants-claimants contends that Naveen Kumar deceased was aged about 34 years of age and was running tour and travel agency and used to earn ₹35,000/- per month and as per income tax return Ex.P-6 the annual income of the deceased was ₹1,58,000/- but no compensation with regard to future prospect was awarded and placed law laid down by the Hon'ble Apex Court in ***Rajesh Vs. Rajbir's case*** where the deceased person was self employed or engaged on fixed wages, he will also get increase in total income over a period of time and it was held that if the deceased was aged below 40 years, then an addition of 50% to the actual income of the deceased while computing future prospect should be granted. He further contends that the dependency of 1/4th was wrongly determined, interest is to be awarded at the rate of 18%, and funeral expenses awarded are on lesser side, no amount was granted on account of loss of love and affection to mother of the deceased and as such, prayed for modification of the award.

11. Hence, the instant cross-appeals by the claimants as well as the Insurance Company.

12. Heard learned counsel for the parties and perused the relevant document produced by them.

13. So far as the contention raised by learned counsel for the Insurance Company qua the contributory negligence is concerned the same is to be found based on mere conjectures and surmises and lack of corroboration from any substantive evidence. On the contrary, the eye witness produced by the claimants before the learned Tribunal have

categorically proved on record that the accident took place due to rash and negligent driving on the part of respondent No.1 and nothing cropped up in their cross-examination. Interestingly, their version was not refuted by respondent No.1 driver of the offending vehicle by stepping into witness box after ample of opportunities being granted.This aspect has been thoroughly discussed by learned Tribunal while passing award in question and no ground is made out to interfere therein qua the accident had taken place due to negligence on the part of respondent No.1 driver of the offending vehicle and accordingly finding no merit in the contention raised by counsel for the Insurance Company in this regard.

14. As per ***Sarla Verma's case*** (supra), 1/4th of the salary is to be deducted as personal and living expenses of the deceased, which would leave the salary to be Rs.1,18,500/-. However, the multiplier of 16 applied by the learned Tribunal is in adherence with the guidelines laid down in ***Sarla Verma's case*** (supra). Further, in accordance with the judgment in ***National Insurance Company Ltd. Versus Pranay Sethi's case, (2017) 16 SCC 680,*** 40% of the salary would be added as future prospects, which would amount to ₹47,400/- in the present case. Therefore, total income after future prospects would be ₹1,65,900/-. Additionally, compensation on account of loss of estate, is determined to be ₹16,500/-; that on account of loss of consortium is determined to be ₹44,000/- and that on account of funeral expenses is determined to be ₹16,500/- relying on ***Pranay Sethi's*** case (supra) and ***Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram, 2018(4) RCR (Civil) 333.***

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

Sr. No.	Heads	Compensation Awarded
1.	Income	₹ 1,58,000/
2.	Deductions (1/4th)	₹ 39,500/-
3.	Total Income after deducting personal expenses	₹ 1,18,500/-
4.	Future prospects (40%)	₹ 47,400/-
5.	Total Income after including future prospects	₹1,65,900/-
6.	Multiplier of 16	₹ 26,54,400/-
7.	Loss of estate	₹ 16,500/-
8.	Funeral expenses	₹16,500/-
9.	Loss of consortium ₹44000/- x 4	₹ 1,76,000/-
10.	Medical Expenses	₹ 32,300/-
	Total	**₹28,95,700/-**
	Interest	7.5%

16. Accordingly no ground is made out to absolve the appellant Insurance Company to its jointly and severely liability to pay compensation.

17. The amount of the enhanced compensation aforesaid shall be payable by respondents No. 1 to 3 jointly and severally with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. However, the first liability being of respondent No.3- Insurance Company to pay the same, it shall pay the amount of the enhanced compensation to the claimants as stated above after deducting the amount of compensation if any, paid during course of proceedings.

18. Accordingly the appeal preferred by the Insurance Company i.e

FAO 2434 of 2016 & FAO No. 4831 of 2016 preferred by the claimants seeking modification of the compensation are disposed of in above terms and the award dated 30.01.2016 passed by Motor Accident Claims Tribunal, Sonepat, is hereby modified accordingly.

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

(SANJIV BERRY)
JUDGE

15.02.2023
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(i) Whether speaking/non speaking Yes/no
(ii) Whether reportable/non reportable Yes/no