IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-349-2015 (O&M)
Reserved on: 24.03.2023
Date of Pronouncement: 29.03.2023

Oriental Insurance Company Ltd.

...Appellant

Versus

Manish Dhingra and others

...Respondents

(2) FAO-352-2015 (O&M)

Oriental Insurance Company Ltd.

...Appellant

Versus

Manish Dhingra and others

...Respondents

(3) FAO-98-2015 (O&M)

Manish Dhingra and another

...Appellants

Versus

Puneet Singla and others

...Respondents

(4) FAO-1873-2015 (O&M)

Manish Dhingra and another

...Appellants

Versus

Puneet Singla and others

...Respondents

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

Present: Mr. Neeraj Khanna, Advocate for the appellant

in FAO-349 and 352-2015 and for respondent No.3
in FAO-98 and 1873-2015.

Mr. A.P.S. Rana, Advocate for the appellants
in FAO-98 and 1873-2015 and for respondents No.1 and 2
in FAO-349 and 352-2015.

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H.S. MADAAN, J.

This order of mine shall dispose of above mentioned appeals being arising out of the same award.

2. Briefly stated facts of the case are that on 06.05.2012 Ashok Kumar deceased along with his wife Santosh Kumari deceased and minor daughter Muskan were riding on Kinetic Honda scooter bearing registration No.CH03-B-9428 returning to their home at Sector 40-C, Chandigarh from Sector 38, Chandigarh. The scooter was being driven by Ashok Kumar deceased on which Santosh Kumari deceased and Muskan were pillion riders. Ashwani Kumar, brother in law of Santosh Kumari was coming behind them on his own scooter and when they had reached near Government High Secondary School, Sector 40B, Chandigarh, a maruti zen car bearing registration No.PB70-0065 (for short 'the offending car') being driven in a rash and negligent manner by respondent No.1 Puneet Singla came and hit the scooter of Ashok Kumar, Santosh Kumari and Muskan, as a result of which, all the three riders fell down on the road and suffered multiple injuries. Ashok Kumar and Santosh Kumari succumbed to the injuries. The matter was reported to the police. FIR No.190 dated 06.05.2012 for offences under Sections 279, 304-A and 337 IPC was registered with Police Station Sector 39, Chandigarh. Minor children of the deceased, namely Manish Dhingra, aged about 14 years, son and Ms. Muskaan Dhingra, aged about 11 years minor daughter of Ashok Kumar and Santosh Kumari deceased through their guardian Inderjit Kumar Dhingra had brought two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') i.e. MACT No.1193 of 2013 against Puneet Singla-driver, Sandeep Singh Kodan-owner and the Oriental Insurance Company Ltd., Chandigarh-insurer of the offending car in question with regard to death of Santosh Kumari and another claim petition bearing No. MACT-1194-2013 was brought by them against these very respondents on account of death of Ashok Kumar. Both the claim petitions were consolidated, vide order dated 07.08.2013 passed by Motor Accidents Claims Tribunal, Chandigarh (for short 'the tribunal') and it was directed that the evidence would be recorded in main claim petition No.1193 of 2013 which would be read for the purpose of deciding both the petitions.

3. As per case of the claimants, deceased Santosh Kumari was aged about 40 years and was self employed doing tiffin work, in that way, earning Rs.6000/- per month. The claimants being her minor children were entirely dependent upon her earning. The claimants prayed for grant of compensation of Rs.50 lacs with interest on account of death of Santosh Kumari in a motor vehicular accident.

4. According to these very claimants, Ashok Kumar deceased aged about 44 years, was working as a motor mechanic earning Rs.10,000/- per month. The claimants being his minor son and daughter were dependent upon his earnings. The claimants prayed for grant of compensation of Rs.50 lacs on account of death of Ashok Kumar in the road accident.

5. On being given notice, all the three respondents appeared. Respondents No.1 & 2 filed a joint written statement whereas respondent No.3 came up with a separate written statement. In the joint written statement filed by respondents No.1 & 2, they had contended that the claim petitions are not maintainable against them since respondent No.1 has been falsely implicated in the case by the police just to get compensation for the claimants. They prayed for dismissal of the claim petition.

6. Respondent No.3-insurance company in a separate written statement filed by it had pleaded that no such accident took place and the claim petitions have been filed by the claimants in collusion with respondents No.1 & 2. According to such respondent, respondent No.1 was not holding a valid and effective driving license on the date of accident and the car in question was being driven against the terms & conditions of the insurance policy. Furthermore, the amount claimed by the claimants is excessive and exorbitant without any basis. Such respondent also prayed for dismissal of the claim petitions.

7. No replication was filed. Following issues on merits were framed by the tribunal:-

1. Whether the accident dated 06.05.2012 causing the death of Santosh Kumari and Ashok Kumar have occurred on account of rash and negligent driving of car bearing registration No.PB-70-0065 being driven by respondent No.1? OPP.

2. If issue No.1 is proved, whether the claimants are entitled for compensation, if so, how much and from whom? OPD.
3. Whether the respondent No.1 was not holding a valid and effective driving licence on the day of accident? OPR.
4. Relief.

8. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the tribunal decided issue No.1 in favour of the claimants and against the respondents, holding that the accident in which Ashok Kumar and Santosh Kumari lost their lives and claimant Muskan suffered injuries had taken place on account of rash and negligent driving of the offending car by respondent No.1; issue No.2 was decided holding the claimants entitled to get compensation whereby a sum of Rs. 6,90,600/- was awarded on account of death of Santosh Kumari and a sum of Rs.9,61,000/- was awarded on account of death of Ashok Kumar; issue No.3 was decided holding that respondent No.1 Puneet Singla was having a valid and effective driving license at the time of accident. Resultantly, both the claim petitions were accepted and claimants were awarded compensation of Rs.6,90,600/- on account of death of Santosh Kumari and sum of Rs.9,61,000/- on account of death of Ashok Kumar with interest @ 7.5% p.a from the date of filing of claim petitions till actual realization. The liability to pay this amount being joint and several of all the three respondents. The claim petitions were allowed with costs. The compensation was ordered to be apportioned between the two claimants in equal shares, vide award dated 01.09.2014.

9. Feeling aggrieved by such award passed by the Tribunal, the insurance company has approached this Court by way of filing two separate appeals. Similarly the claimants have also knocked at the door of this Court by filing appeals seeking enhancement of compensation. Since all the four appeal arise out of the same award, those are being disposed of, vide a single judgment. Notice of the appeals were given to the respective respondents who have put in appearance through counsel.

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

11. The tribunal considering the oral as well as documentary evidence brought on record by the claimants in the form of testimony of Ashwani Kumar Dhingra, brother in law of Santosh Kumari who had provided the eye witness account of the accident and was author of the FIR Ex.P1 as well as statement of claimant Musktan PW4 who had suffered injuries in the accident, considering the fact that FIR with regard to the accident was there and as deposed by the eye witnesses, the accident had taken place on account of rash and negligent driving of the offending car in question by Puneet Singla and the fact that Puneet Singla, had not stepped into the witness box to rebut the evidence adduced by the claimants, in view of the settled law, decided issue No.1 in favour of the claimants and against the respondents, holding that the accident took place due to rash and negligent driving of the offending car in question by respondent No.1 resulting in death of Ashok Kumar and Santosh Kumari and causing injuries to claimant Muskan. It being so, the driver, owner and insurance company of the offending car were found liable to pay compensation to the claimants, who are minor children of both the deceased, as such they are legal heirs and legal representatives.

12. For determining the compensation, the tribunal has taken the age of Santosh Kumari to be 40 years, keeping in view her date of birth entered as 12.09.1973 in the photocopy of her matriculation certificate. The approach of the tribunal in doing so was correct. Her monthly income has been taken to be Rs.4000/- only. I find that approach of the tribunal in doing so was not fully correct and an amount of Rs.6000/- deserves to be taken as monthly income of deceased Santosh Kumari, because efforts put in by her in doing household work are also to be taken into view. As per case of the claimants, she was doing tiffin work. The efforts put in by a house wife in doing household chores cannot be under estimated. The work done by her usually includes doing cooking, washing utensils, washing clothes etc.

13. The tribunal has added 30% of the income as future prospects. In view of the judgment **<u>National Insurance Company Limited Versus Pranay Sethi and Ors.</u>**, 2017(4) RCR(Civil)1009, when the deceased was in age group of 40 to 50 years, addition of 25% is to be made. Doing that, the monthly income is taken as Rs.7500/- (6000+1500). 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Deducting that, the dependency of claimants comes out to Rs.5000/- (7500 – 2500), annual dependency 60,000/- (5000 X 12).

14. The tribunal has adopted multiplier of 16 when as per judgment **<u>Smt. Sarla Verma and others Versus Delhi Transport</u>**

Corporation and Anr., 2009(3) RCR(Civil) 77, when the deceased was in the age group of 36 to 40 years, multiplier of 15 is required to be applied. Doing that, the total compensation is worked out to Rs.9,00,000/- (60,000 X 15).

15. The claimants are entitled to get Rs.15,000/- on account of funeral expenses, Rs. 15,000/- towards loss of estate as well as Rs.40,000/- each under the head filial consortium. Therefore, the total compensation is thus worked out to Rs. 10,10,000/-.

16. With regard to Ashok Kumar, the tribunal has rightly taken his age as 44 years on the basis of evidence available i.e. photocopy of Pan Card Ex.P9, Driving License Ex.P10 reflecting his date of birth as 30.10.1969. Although, the claimants have pleaded that Ashok Kumar was self-employed earning Rs.10,000/- per month; they have placed on record income tax return for assessment years 2009-2010 Ex.P11, the tribunal has taken his income to be Rs.6000/- per month. I find that it would be proper and appropriate to take his monthly income to be Rs.7500/-.

17. Addition of 25% is to be made towards future prospects in view of the judgment **Pranay Sethi (supra)** when the deceased was in age group of 40 to 50 years. Doing that, the monthly income is taken as Rs.9375/- (7500+1875). 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Deducting that, the dependency of claimants comes out to Rs.6250/- (9375 – 3125), annual dependency 75,000/- (6250 X 12).

18. The tribunal has adopted multiplier of 15 when as per judgment **Smt. Sarla Verma** (supra), when the deceased was in the age group of 41 to 45 years, multiplier of 14 is required to be applied. Doing that, the total compensation is worked out to Rs.10,50,000/- (75,000 X 14).

19. The claimants are entitled to get Rs.15,000/- on account of funeral expenses, Rs. 15,000/- towards loss of estate as well as Rs.40,000/- each under the head filial consortium. Therefore, the total compensation is thus worked out to Rs. 11,60,000/-.

20. The Tribunal has awarded a sum of Rs.6,90,600/- on account of death of Santosh Kumari, which is enhanced to 10,10,000/-. Thus, an additional compensation payable to the claimants comes out to be Rs.3,19,400/- (Rs.10,10,000 – 6,90,600/-) and on account of death of Ashok Kumar, the claimants are entitled to get additional compensation of Rs.1,99,000/- (Rs.11,60,000 – 9,61,000/-). The claimants shall be entitled to recover this amount with interest @ 7.5% p.a., from the date of filing of claim petitions till actual realization. The liability to pay this amount being joint and several of all the three respondents. The apportionment of compensation and mode of payment would remain the same as directed by the tribunal in the impugned award.

21. Accordingly, the appeals filed by the claimants i.e. FAO 98 and 1873 of 2015 stand partly allowed accordingly, whereas, the appeals filed by the insurance company i.e. FAO-349 and 352 of 2015 stand dismissed.

29.03.2023 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No