

FAO-4040-2015 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****FAO-4040-2015 (O&M)****Date of decision: April 18, 2023**

Shri Ram General Insurance Company Limited

....Appellant

versus

Shanti Devi and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Rajbir Singh, Advocate for appellant.

Mr. J.P. Sharma, Advocate for respondent No.6.

Respondents No.1 to 4 proceeded *ex parte* and service upon respondent No.5 dispensed with vide order dated 17.11.2015.

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**ARUN MONGA, J. (ORAL)****CM-12883-CII-2015**

For the reasons stated in application, same is allowed subject to all just exceptions. Delay of 7 days in filing appeal is condoned.

**CM-12884-CII-2015**

This is an application for leading additional evidence to produce Voter Card of deceased-Sardar Singh as Annexure A-1.

Despite service none appeared for non-applicant-respondents No.1 to 4 and they were proceeded against *ex parte* vide order dated 17.11.2015. In the premise, averments contained in application remained uncontroverted. For the reasons stated in application, same is allowed. Additional evidence Annexure A-1, which is a copy of Election Card of deceased-victim, is taken on record, subject to all just exceptions, with liberty to non-applicant(s) to file application at subsequent stage, in case Election Card is not found by them to be valid.

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**Main case (O&M)**

Appellant before this Court is Insurance Company seeking to set aside impugned award dated 23.02.2015 rendered by learned Motor Accidents Claims Tribunal, Narnaul (for brevity, “Tribunal”) whereby claim petition was partly allowed and compensation of Rs.7,51,056/- was awarded to claimant No.1 on account of death of her husband.

2. Succinct facts, as noted by learned Tribunal, are as below:

“2. xx xx xx. on 2.3.2012 at about 3:00/3:30 PM, Daya Ram son of Ami Lal and Jai Singh son of Chhote Lal were coming on their motor cycle from Kanina side and when they reached near Gujar was turn, Ateli then one person named as Sardar Singh was standing on katcha berm in the meanwhile one Pick-Up bearing registration no. HR-66/4037 came from the side of Ateli being driven by its driver in a rash and negligent manner and gave a hit to Sardar Singh, upon which Daya Ram and Jai Singh proceeded towards the place of occurrence and the driver of the pick fled away towards Ateli. It is further averred that Daya Ram and Jai Singh after making arrangement of the vehicle took Sardar Singh at Rewari Hospital where he succumbed to the injuries. It is further averred that this accident was witnessed by Daya Ram and Jai Singh and in this regard FIR no.25 dated 3.3.2012 under Sections 279/304A IPC, Police Station, Ateli was got registered. Xx xxx xxxxx”

3. Upon notice, none appeared on behalf of respondent No.5 herein (driver of the alleged offending vehicle) and was proceeded against *ex parte* on 17.04.2014.

3.1. Respondent No.6 herein (owner of the alleged offending vehicle) filed written statement and averred that on the alleged date, time and place, no such accident took place. FIR was got registered in collusion with the police. It was further averred that if Tribunal came to the conclusion that accident had taken place due to rash/negligent driving by respondent No.5 herein, in that eventuality, appellant-insurance company was liable to pay amount of compensation as vehicle was insured with appellant herein and respondent No.5-driver was having valid driving licence on the date of accident. Remaining contents were denied and prayer for dismissal of the petition was made.

3.2. Appellant-Insurance Company filed written statement and averred that driver of Pick-Up bearing registration no.HR-66-4037 was not holding valid and effective driving licence to drive vehicle at the time of accident. It was further averred that on the alleged, date, time and place no such accident took place with Pick Up bearing registration no.HR-66-4037. Remaining contents were denied and prayer for dismissal of claim petition was made.

4. Learned Tribunal framed the following issues:

- “1. *Whether Sardar Singh son of Sadhu Ram succumbed to his injuries in a road side accident which took place on 2.3.2012 at about 3:00/3:30 PM near Gujarwas turn, Ateli due to rash and negligent driving of Pick-Up no.HR-66-4037? OPP*
2. *To what amount of compensation, if any, and from whom the claimants are entitled? OPP*
3. *Whether the vehicle in question was being driven by respondent No. 1 in violation of terms and conditions of insurance policy? OPR*
4. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1& 2 in favour of claimants. Issue No.3 was decided against Insurance Company. Consequently, claimant No.1 was awarded compensation of Rs.7,51,056/- along with interest at the rate of 9% per annum.

6. Learned counsel for appellant-Insurance Company contends that claimants failed to prove on record that alleged accident had taken place due to rash and negligent driving of respondent No.5 herein. Learned Tribunal erred in assessing income of deceased as Rs.11,000/- as wife of deceased, in her cross-examination admitted that she was getting family pension after the death of her husband, therefore, there was no loss of income. He would contend that since Tribunal awarded compensation only in favour of claimant No.1, therefore, deduction towards personal expenses ought to have been 50% instead of 1/3<sup>rd</sup> as done by learned Tribunal. He also contends that multiplier of 7 was wrongly applied while taking age of the deceased as 62/63 years, however, as per Voter

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card (Annexure A-1) of deceased, the age of deceased was mentioned as 59 years as on 01.01.1994. Therefore, in view of the same, multiplier of 5 was required to be applied instead of 7. Interest rate was also on higher side.

7. Having heard learned counsel for the parties, I am of the view that since deceased-victim, as per Election Card (Annexure A-1) was 59-year old, as on 01.01.1994 and the accident having taken place on 02.03.2012, he was therefore, 72-year old on the date of accident, and in terms thereof, multiplier of 5 ought to have been applied instead of 7. However, as regards consortium, I am of the view that learned Tribunal committed a manifest error in granting the same only *qua* widow of the deceased and that too on higher side being Rs.1 lakh and denying the same to the sons. Furthermore, testimony of widow of deceased *qua* his additional income of Rs.5,000/- per month remained un-impeached as no cross-examination was put to her. By reasonable guesstimate, agriculture income of the deceased is assessed as Rs.2,000/- per month adding the same to pension of Rs.11,000/- making total income of Rs.13,000/- per month.

8. In the premise, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22, National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, I am of the view that compensation deserves enhancement.

8.1 In view of the above discussion, various computations of compensation *qua* each head are modified as below:

|                             |                    |
|-----------------------------|--------------------|
| Deceased                    | Sardar Singh       |
| Date of accident/death      | 02.03.2012         |
| Age                         | 72years            |
| Marital Status              | Married            |
| Claimants                   | Wife andthree sons |
| Income of the deceased      | Rs.13,000/- p.m.   |
| Deduction in dependency for | 1/3 <sup>rd</sup>  |

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|                                               |                                                                                |
|-----------------------------------------------|--------------------------------------------------------------------------------|
| personal expenses                             | (13,000-4,333)=Rs.8,667/-                                                      |
| Annual dependency                             | Rs.1,04,004/- (8,667x 12)                                                      |
| Total loss of dependency with Multiplier of 5 | Rs.5,20,020/-                                                                  |
| Loss of Consortium                            | Rs.1,76,000/-<br>(Rs.44,000 x 4)                                               |
| Loss of estate                                | Rs.16,500/-                                                                    |
| Funeral expenses                              | Rs.25,000/- (as awarded by Tribunal)                                           |
| Expenses on account of Transportation         | Rs.10,000/- (as awarded by Tribunal)                                           |
| Total                                         | Rs.7,47,520/- (5,20,020+ 1,76,000/- + Rs.16,500/- + Rs.25,000/- + Rs.10,000/-) |
| Compensation awarded by the Tribunal          | Rs.7,51,056/-                                                                  |
| Reduced amount of compensation                | -Rs.3,536/-<br>(Rs.7,51,056-Rs.7,47,520/-)                                     |

9. Accordingly, impugned award is modified in terms of above computations. Reduced compensation shall be payable to claimants along with interest as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Reduced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in terms of the apportionment, as already determined by learned Tribunal. Excess payment, if already made, shall be refunded by the claimants.

10. In the premise, instant appeal is disposed of in above terms.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

April 18, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No