IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **FAO No.4045-2015 (O&M)**
Date of decision: 13.03.2023

Reliance General Insurance Co. Ltd. **...Appellant(s)**

Vs.

Raj Kumar & Others **...Respondent(s)**

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FAO No.6357-2015 (O&M)
Date of decision:

Raj Kumar & Others **...Appellant(s)**

Vs.

Daljeet Singh & Others **...Respondent(s)**

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CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:-Mr. Sanjeev Kodan, Advocate for the appellant Ins. Co.
(In FAO-4045-2015)

Mr. Gaurav Kalsi, Advocate for the appellants/claimants
(In FAO-6357-2015)

Mr. Iqbal, Advocate for
Mr. Gobind Dhanda, Advocate for respondent No.4/driver
(In FAO-4045-2015)

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<u>NIDHI GUPTA, J.</u>

This order shall dispose of the abovesaid two appeals – being FAO-4045-2015 filed by the Insurance Company; and FAO-6357-2015 filed by the claimants – both appeals arising out of one Award dated 06.04.2015 passed by Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as "the learned Tribunal") passed in MACP Case No.141/2014 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act").

For the sake of convenience and with the consent of learned counsel for the parties, facts, which are even otherwise common, have been taken from FAO-4045-2015 filed by the Insurance Company. As common questions of law and fact are involved in both the appeals, the same are being disposed of by common order.

2. Claimants are two major brothers and mother of deceased-Gurbax Singh. Vide the impugned Award, the Learned Tribunal awarded compensation of Rs.13,70,000/- along with interest @ 7.5% per annum from the date of filing the claim petition till realization. Respondents No.4 & 5, being driver and owner of truck bearing registration No.HP-12C-9921 (hereinafter referred to as "the offending vehicle") respectively, and the appellant Insurance Company, were held jointly and severally liable to pay the amount of compensation.

3. While issuing notice of motion, this Court has stayed recovery of compensation amount beyond Rs.8 lac.

4. Brief facts of the case are that the learned Tribunal on the basis of evidence and pleadings placed before it concluded that deceased-Gurbax Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 15.03.2013 due to rash and negligent driving of the offending truck being driven by respondent No.4, owned by respondent No.5, and insured by the appellant.

5. Accordingly, Learned Tribunal granted compensation to the claimants/respondents No.1 to 3 herein, in following manner:-

HEADS	**AMOUNT**
Income	Rs.10,000/- per month
Addition	50%

Deduction	1/3rd
Annual income	Rs.1,20,000/-
Multiplier	11
Loss of dependency	Rs.13,20,000/-
Medical expenses	--
Loss of consortium	--
Loss of estate	Rs.25,000/-
Funeral expenses	Rs.25,000/-
Total	**Rs.13,70,000/-**

6. Learned counsel for the appellant-Insurance Company assails the impugned Award inter alia, on the ground:

a) that income of the deceased has been taken as Rs.10,000/- which is on higher side. It is submitted that no proof whatsoever was led by the claimants to establish on record that deceased was earning Rs.10,000/- per month. Accordingly, notional income of deceased should have been assessed as per relevant Minimum Wage notification dated 22.2.2013 as per which income of the deceased ought to have been taken as Rs.5,000/- per month;

b) that in view of the fact that deceased was 25 years of age at the time of accident and was admittedly a bachelor, deduction of 50% ought to have been made towards personal expenses; as also future prospects @ 40% ought to have been added. It is very fairly submitted by ld. Counsel for the appellant Company that keeping in view the age of deceased, multiplier of 18 is applicable whereas the learned Tribunal has applied multiplier of 11;

c) that the accident in question was a head on collision between the offending vehicle and Force motor pick up bearing registration No.HP-12D-2952 being driven by the deceased. This fact is borne out from the testimony of PW3-Anand Kumar who is eyewitness to the accident in question, and who had categorically stated that "*it is correct that the said accident is a head on collision".* It is submitted that accordingly, contributory negligence is made out. However, this fact has not been considered by the learned Tribunal at all. In support, learned counsel for the appellant Company relies upon judgment of the Hon'ble Supreme Court in **Bijoy Km. Dugar Vs. Bidyadhar Dutta & Others Law Finder Doc. ID # 119539; Rajan Vs. Soly Sebastian Law Finder Doc. ID # 700010;** and **Kirti and Another Etc. Vs. Oriental Insurance Co. Ltd. Law Finder Doc. ID # 1795020.**

7. Per contra, it is submitted by learned counsel for the claimants:

a) that learned Tribunal has taken income of the deceased on lower side as it has ignored the fact that the deceased was owner of 12 acres of land, and agricultural income of the deceased has not been taken into account. Deceased also used to ply his Force pick up vehicle. Therefore, deceased was earning Rs.30,000/- per month from both sources. Hence, learned Tribunal is in error in taking income of the deceased as only Rs.10,000/- per month;

b) that age of the deceased is established on record as 25 years as per his Voter Card where his date of birth is mentioned as 26.02.1988;

c) that all the three claimants were entirely dependent on income of the deceased as claimant No.1-Raj Kumar is physically disabled to the extent of 65% as is borne out from disability certificate (Exhibit P1). Claimant No.2 is aged mother of the deceased; and claimant No.3 is admittedly suffering from mental retardation to the extent of 80%. It is submitted that the deceased was the only earning member of the family and claimants were completely dependent upon him. Despite this nothing has been granted by the learned Tribunal towards loss of consortium;

d) that multiplier of 18 ought to have been applied;

e) that deduction of $1/3^{rd}$ made by the learned Tribunal is correct;

f) that future prospects @ 40% ought to have been added;

g) that no evidence has been led by the Insurance Company to prove contributory negligence on part of the deceased. And, an FIR stands duly registered against driver of the offending vehicle.

8. In rebuttal, it is submitted by learned counsel for the appellant-Insurance Company:

a) that claimants were residing separately from the deceased. It is submitted that this is borne out from ration card (Exhibit PW1/E) which was in the name of claimant No.1. Claimant No.2 was also residing with claimant No.1 only. In fact, Registration Certificate of the pick up being driven by the deceased is also in the name of claimant No.1. It is submitted that accordingly, no dependency of the claimants on the deceased is made out;

b) that the agricultural land is given on lease by the claimants and therefore, there is no loss of income from that side.

9. In response to the rebuttal, it is submitted by learned counsel for the claimants;

a) that the pick-up vehicle is in the name of claimant No.1 however, the same used to be plied by the deceased from which income he supported the claimants;

b) that claimant No.1 is handicapped and is incapable of doing any physical work, and claimant No.3 is mentally retarded. Therefore, deceased was their sole source of income.

10. No other argument is raised on behalf of the parties.

11. I have heard learned counsel for the parties.

12. a) It is an established position in law that income from agriculture is not to be considered while computing compensation as the land and income from the said land, continue to remain with the claimants. Therefore, there is no loss of income from agriculture. As such, claimants can derive no benefit from their argument in this regard;

b) Admittedly, the pick-up vehicle bearing registration No.HP-12D-2952 is in the name of claimant No.1, as evident from Registration Certificate (Exhibit P4). However, as claimant no. 1 is admittedly, physically-disabled, the said pick-up truck was being plied by the deceased who used to ply it as a transport vehicle. It has also come on record that claimants had obtained a loan to run the said pick up vehicle for which they were paying regular installments. Thus, clearly, there must have been sufficient earning from the pick-up truck by the deceased, in order to repay the loan taken on the pick-up vehicle. Accordingly, I find no error in the notional income as assessed by the learned Tribunal to be Rs.10,000/- per month;

c) It has further come on record that claimants No.1 and 2 are handicapped, and incapable of any physical work. Claimant No.1 Raj Kumar is physically disabled. Perusal of disability certificate (Exhibit P1) issued in respect of claimant No.1 shows that claimant No.1 has "*severe, permanent locomotor impairment"* to the extent of 65%. Claimant No.2 is aged mother of the deceased. Perusal of Exhibit P2 which is disability certificate in respect of claimant No.3 shows that claimant No.3 has "*profound, permanent mental retardation"* to the extent of 80%. Thus, it is established that deceased was the only earning member of the family, and the claimants were entirely dependent on the deceased for their welfare and maintenance at every level. Accordingly, deduction of 1/3rd as made by the learned Tribunal towards personal expenses is also correct;

d) It is to be noted that the entire evidence led by the claimants remained un-rebutted by the Insurance Company. Further, in my view, in view of the factum of dependency of the claimants as established above, argument of the Insurance Company that claimant No.1 has a ration card (Exhibit PW1/E) in his name is inconclusive and liable to be rejected. Even, assuming the claimants may have been living separately, but their dependency upon income of the claimant is established on record;

e) Age of the deceased is proven to be 25 years from his Voter Card where his date of birth is mentioned as 26.02.1988. Accordingly, multiplier of 18 is applicable, and future prospects @ 40% have to be added;

f) As regards the argument of learned counsel for the Insurance Company that accident in question was a head-on collision as borne out from the testimony of eyewitness PW3-Anand Kumar, perusal of evidence affidavit Exhibit PW3/A led by PW3, available at page 36 of the LCR reveals that in said affidavit PW3 has stated as follows:

"….The driver of the said force motor pick up was driving its vehicle at a normal speed and in the perfect and safe manner. In the mean time a 10 tyres truck tralla was coming being driven in rash and negligent manner by its driver and directly hit the Force motor pick up No.HP-12D-2952 from front … … … The above said accident had taken place due to the rash negligent driving of the driver of 10 tyres truck tralla No.HP-12C-9921."

g) In my view, therefore, it cannot be unequivocally asserted that this was a case of head-on collision, or there was any negligence on the part of deceased. Moreover, admittedly, an FIR Exhibit P1 has been registered under Sections 279, 337, 304-A IPC against respondent No.4/driver of the offending vehicle. It has also come on record that after the collision, the offending vehicle turned turtle. It is therefore, clear that the offending vehicle was being driven at such great speed that despite being a heavy motor vehicle of 10 tyres, it turned turtle from the impact of the collision with the Force Pick-up truck of the deceased. Therefore, in my view, there is no sufficient material on record to prove or substantially establish that this is a case of head on collision/contributory negligence. Accordingly, argument of the learned counsel for the appellant-Insurance Company to this effect is rejected;

h) Thus, from the above discussion it emerges that the dependency of claimants upon income of the deceased stands established. Accordingly, in view of the aforesaid facts and circumstances of the case, all the three claimants are held entitled to consortium of Rs.41,000/- each.

13. Accordingly, compensation awarded to the claimants is re-worked as follows:-

HEADS	**AMOUNT**
Income	Rs.10,000/- per month
Future prospects	40%
Multiplier	18
Deduction	1/3rd
Annual dependency	Rs.20,16,000/-
Consortium	Rs.41,000/- each to all the claimants
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total	**Rs.21,69,000/-**

13. Ratio of apportionment and manner of disbursement of compensation amongst the claimants, as determined by the learned Tribunal is maintained. Claimants are further held entitled to compensation as determined above, along with interest @ 6% on enhanced compensation from date of filing claim petition till realization.

14. Accordingly, appeal filed by the claimants being FAO No.6357 of 2015, is partly allowed as above; and appeal filed by Insurance Company being FAO No.4045 of 2015, is dismissed.

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

13.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No