IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-5878-2014(O&M)

Santosh Kumari and others

...Appellants

Versus

Amar Singh and others

...Respondents

(2) FAO-7481-2014(O&M)

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Santosh Kumari and others

...Respondents

Date of Decision:-7.7.2023

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

Present: Mr.Vivek Goyal, Advocate and
Mr.Kapil Gupta, Advocate
for the appellants in FAO-5878-2014 and
for respondents No.1 to 6 in FAO-7481-2014.

Mr.Rajbir Singh, Advocate
for the appellant in FAO-7481-2014 and for
respondent No.3 in FAO-5878-2014.

Mr.Viney Saini, Advocate
for the respondents No.1 and 4 in FAO-5878-2014 and
for respondents No.7 and 9 in FAO-7481-2014.

Mr.J.S. Rattu, Advocate
for respondent No.2 in FAO-5878-2014 and
for respondent No.8 in FAO-7481-2014.

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<u>H.S. MADAAN, J.</u>

1. By this order, I shall dispose of two FAOs i.e. FAO-5878-

2014(O&M) filed on behalf of appellants Smt.Santosh Kumari and others and FAO-7481-2014(O&M) filed on behalf of appellant – Shri Ram General Insurance Company Ltd., which have arisen out of the same award.

2. Briefly stated, facts of the case are that on 2.6.2011 Satish Kumar (deceased) was going on foot from village Mohra to village Ojhlon; Sukhdev Singh son of Rulda Ram, resident of that very village was proceeding ahead of Satish Kumar; at about 9:30 p.m., when Satish Kumar reached near village Chhorpur, in the meanwhile, a three-wheeler bearing registration No.HR-65-2090 (hereinafter referred to as the offending vehicle) being driven in a rash and negligent manner by respondent No.1 Amar Singh came from behind and dashed against Satish Kumar, as a result, he fell down and received multiple injuries; he was shifted to Community Health Centre, Shahabad, where he succumbed to the injuries.

FIR No.150 dated 3.6.2011 for the offences under Sections 279 and 304-A IPC was registered at Police Station Shahabad; postmortem examination on the dead body of the deceased was conducted at LNJP Hospital, Kurukshetra.

3. The legal representatives of deceased, namely his widow – Santosh Kumari, aged about 35 years, minor sons Ravi Kumar, aged 14 years and Jagdeep, aged 11 years, minor daughter Jaspreet Kaur, aged 8 years, father Rulda Ram, aged 64 years and mother – Debo alias Debi, aged 61 years, all residents of village Ojhlon, District Ambala had filed a claim petition under Sections 166, 140 and 141 of the Motor Vehicles

Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Amar Singh – driver, Jagdish Chand – owner, Shriram General Insurance Company Ltd. Sitapura, Jaipur – insurer and Vakil Singh – purchaser/owner of the offending vehicle.

4. On getting notice, all the four respondents had put in appearance and offered a contest. However, Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) vide award dated 6.3.2014 by giving issue-wise findings had accepted the claim petition and awarded a compensation of Rs.11,43,500/- to the claimants with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the awarded amount, payable by all the respondents jointly and severally with costs. The manner in which the compensation is to be apportioned is also given in the award.

5. The appellants/petitioners/claimants were dissatisfied with the amount of compensation awarded to them by the Tribunal, whereas respondent insurance company was of the view that the compensation so awarded by the Tribunal was on the higher side. They have approached this Court by way of filing separate appeals.

6. Notices of the appeals were issued to the respondents, who put in appearance through counsel.

7. Since both the appeals have arisen out of the same award, those are being taken up together for disposal.

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

9. In this case the Tribunal considering the evidence available

on the record particularly deposition of PW2 Sukhdev Singh, who provided the eye-witness account of the accident vide his affidavit Ex.PW2/A, deposing in consonance with the case of the claimants as given in the claim petition and remaining unshattered in his cross-examination, taking into consideration the FIR No.150 dated 3.6.2011 for the offences under Sections 279 and 304-A IPC registered at Police Station Shahbad with regard to the accident as well as certified copy of report under Section 173 Cr.P.C. Ex.P1 showing that respondent No.1 Amar Singh had been challaned by the police and he is facing trial in the Court, rough site plan Ex.P4, postmortem report of deceased Satish Kumar Ex.P2, in the light of the fact that respondent No.1 Amar Singh – driver of the offending vehicle had not appeared to rebut the evidence adduced by the claimants, has returned a clear finding that respondent No.1 Amar Singh was author of the accident by his rash and negligent driving of the offending vehicle.

10. This finding is proper and appropriate there being no reason to differ with the same. For that reason respondent No.1 – Amar Singh being driver, respondent No.2 Jagdish Chand being owner, respondent No.3 – Shriram General Insurance Company Ltd. being insurer and respondent No.4 Vakil Singh being purchaser of the offending vehicle were held liable to pay compensation to the claimants jointly and severally. Respondent No.2 – Jagdish Chand being registered owner of the vehicle could not escape liability to pay compensation since in the record with regard to registration of the vehicles his name continued to be reflected and Vakil Singh – respondent No.4 was made liable having

purchased the three-wheeler in question from registered owner respondent No.2 Jagdish Chand though his name had not been entered in the record with regard to the registration of such vehicle.

11. With regard to the quantum of the compensation awarded, I find that it was consistent case of the claimants that the deceased was working as a mason besides being engaged in dairy farming. They claimed that he was earning Rs.20,000/- per month. In that regard oral evidence had been adduced inasmuch sas petitioner No.1 Santosh Kumari appearing as PW1 in her affidavit Ex.PW1/A had submitted that her husband Satish Kumar had aged 37 years, working as a mason as well as dealing in dairy farming and used to earn Rs.20,000/- per month. PW2 Sukhdev Singh in his affidavit Ex.PW2/A while providing the eye-witness account of the accident in addition had stated that deceased was working as a mason and running milk dairy, earning Rs.20,000/- per month. PW3 Ram Saran in his affidavit Ex.PW3/A had similarly deposed in that regard.

12. No evidence in rebuttal had been adduced by the respondents. The Tribunal has outrightly rejected such contentions stating that except oral statements no documentary evidence has been adduced with regard to profession and income of Satish Kumar. However, considering Satish Kumar to be an able bodied person, his monthly income was assessed as Rs.5,400/-, which earning is meant for labourers as per administrative order for minimum wages for the year 2011-12 issued by Deputy Commissioner, Kurukshetra.

13. Learned counsel for the appellant – insurance company has

mainly challenged the award on the point of quantum. He argued that at the relevant time, the minimum wages prevalent in the State of Haryana were Rs.4,343/- and the Tribunal fell in error in considering the administrative order for minimum wages for the year 2011-12 issued by Deputy Commissioner, Kurukshetra.

14. This argument lacks force. When there is no direct evidence available with regard to income of the deceased, the Tribunal is to assess the notional income by taking into consideration various factors like the minimum wages payable to various persons in light of the notification issued by the State Government, the wages being paid to the labourers unskilled, semi-skilled or skilled as the case may be in open market. The rates fixed by the Deputy Commissioner of the area can also be taken into consideration. However, such rates are not final and binding upon the Tribunal, which is to arrive at its own conclusion considering various relevant factors.

15. I find that the Tribunal was not justified in doing so. The oral evidence brought on record by the claimants with regard to the deceased working as a mason did not deserve to be discarded in such a manner though there was no convincing evidence that he was engaged in dairy farming and was earning any income therefrom. If it is so then his income is to be considered taking him to be a mason rather than a labourer. In my view, it would be proper and appropriate to take income of the deceased as Rs.6,000/-.

16. Learned counsel for the appellant – insurance company has also argued that the Tribunal fell in error in taking the age of the deceased

to be 38 years when in terms of the copy of the voter identity card Mark-R1, his age in the year 2002 is mentioned as 33 years. The accident had taken place on 2.6.2011 that means he was aged 43 years at the time of his death, therefore multiplier of 14 should have been applied and future prospects of 25% should have been granted when the Tribunal used multiplier of 15 and made addition of 50% towards future prospects.

17. However, learned counsel appearing for the claimants has contended that the Tribunal taking into consideration the oral evidence adduced by the claimants and age entered in the postmortem report of the deceased Ex.P2 as 37 years has rightly taken age of the deceased to be 38 years.

18. After hearing the rival contentions, I find that the Tribunal has dealt with this aspect in detail in the award more particularly in para No.22 relying upon the certificate dated 18.2.2013 Ex.P3 issued by Head Teacher, Government Primary School, Ojhlan showing his date of birth as 8.2.1973. That certificate issued by a public servant in terms of school record has rightly been relied upon in preference over voter identity card Mark R1.

19. The Tribunal has made addition of 50% to the monthly income of the deceased towards future prospects, However, in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** an addition of 40% of the established income should be warranted where the deceased was below 40 years. Doing that, the monthly income of the deceased is taken as Rs.8,400/- (6000 + 2400).

20. The deceased had left behind six dependents, who are claimants before the Tribunal. The Tribunal was justified in making deduction to the extent of 1/4th towards personal and living expenses of the deceased in terms of the ratio of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***. Therefore, the monthly dependency of the claimants comes out to Rs.6,300/-(8400 – 2100). The annual dependency of the claimants thus comes out to be Rs.75,600/-(6300 x 12).

21. The multiplier of 15 has been rightly adopted by the Tribunal in terms of ratio of judgment . Doing that the compensation comes out to be Rs.11,34,000/-(75600 x 15).

22. Under the conventional heads i.e. loss of consortium to wife, love and affection to wife, minor children and parents, funeral expenses and loss of estate, the Tribunal has awarded a sum of Rs.50,000/- to the claimants. However, as per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

23. Doing that the compensation payable is worked out to be Rs.12,04,000/-(11,34,000+40000+15000+15000), payable by all the respondents jointly and severally.

24. In this way, the enhanced amount comes out to be Rs.60,500/- (12,04,000 – 1143500). The claimants would be entitled to

get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award.

25. With such modification, the ***FAO-5878-2014*** is allowed partly with costs.

26. Consequently, ***FAO-7481-2014*** filed on behalf of the insurance company stands dismissed.

Since with modification, FAO-5878-2014 is allowed partly and FAO-7481-2014 stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

7.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No