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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6095-2014 (O&M)
Date of decision: May 09, 2023

Anita and others

….Appellants

versus

Krishan Chander and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Shashikant Gupta, Advocate for
Mr. Kanhiya Soni, Advocate for the appellants.

Mr. Rajbir Singh, Advocate
for respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

Dreams and aspirations of Sanjay alias Sonu, who was all of 19-year old, died along with him while he was asleep, in the mid of the night at 1:00 a.m., on the rear seat of Car which was hit by the offending vehicle resulting in his instantaneous death. Little did he know that a joy ride with his friends to accompany them to meet relatives at Bhiwani, would turn out to be his last ride ever. At the time, he was an undergraduate being a 2nd year student in Vaish College, Bhiwani. Simultaneously, he was toiling hard to make a bright future working as an Assistant Manager in a proprietorship firm M/s Shiv Ganga Building Material Supplier. Claimants herein are parents and younger sister aggrieved against inadequate compensation awarded by learned Tribunal. In course of hearing, it transpires that Insurance Company does not dispute the occurrence or age or education qualification of deceased, but only dispute is with regard to assessment of his income. More of it later.

2. Appellants before this Court are claimants assailing impugned award dated 24.12.2013 rendered by learned Motor Accidents Claims Tribunal, Bhiwani (for brevity, "Tribunal") by way of enhancement.

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

"*On 17.4.2012, Sh. Jai Bhagwan son of Sh. Ram Kumar, resident of village Kaunt District Bhiwani, a professional driver had taken the Indigo Car No.HR61A6558 of his friend Pardeep son of Sh. Rajender resident of Laxmi Nagar, Bhiwani to meet his relative Balwan Singh son of Sh. Mange Ram, resident of Bhiwari. One Parmarjeet son of Sh. Satender resident of New Bharat Nagar, Bhiwani and his nephew Sanjay alias Sonu (deceased) had also gone with him to Bhiwari in the same Car. All the above-said three persons were coming back from Bhiwari in the aforesaid Car to the village Kaunt after meeting said Balwan. At about 1:00 a.m. on 18.4.2012, when they reached near Khanpur Khurd, Jai Bhagwan driver, after parking the Car to the extreme left side of the road, came out of Car for toilet purposes. Parmarjeet and his nephew Sanjay alias Sonu (since deceased) were sleeping in the above-said Car. All of a sudden, a Tata-407 bearing registration No.HR63/1317 came from the opposite side being driven with fast speed, rashly and negligently by its driver and directly hit into the above-said Indigo Car. Sh. Jai Bhagwan saw that the Indigo Car has completely been damaged and both the persons in the Car, namely, Sanjay and Paramjeet were senseless in the vehicle. Said Sh. Jai Bhagwan cried loudly, on hearing of which, some persons working in the adjoining fields came at the place of occurrence and they cut the body of Indigo Car and put out Sanjay and Paramjeet from the car and sent them to General Hospital, Jhajhar, where Sanjay was declared brought dead. The driver of the offending vehicle Tata 407 bearing registration no.HR63/1317 had caused the aforesaid accident by driving rashly and negligently. Police after receipt of the information came at the spot and on the compliant of Jai Bhagwan, the FIR no.98 dated 18.4.2012 under sections 279, 304A IPC was lodged by the police of Police Station Salawas District Jhajhar against the respondent no.1. Sh. Sanjay alias Sonu son of Sh. Jai Parkash deceased, was aged 19 years and he was Manager in M/s. Shiv Ganga Building Material Supplier authorized dealer of Shree Cement, Ashok Vihar Phase 3, Palam Vihar Road, Gurgaon The employer of the deceased was Mr. Parneet Kumar, Prop. of M/s Shiv Ganga Building Material Supplier, authorized dealer of Shree Cement Ashok Vihar, Phase 3, Opposite C2 Block, Palam Vihar Road, Gurgaon. The deceased used to earn Rs.25000/- per month as lumpsum salary as Manager employed at M/s Shiv Ganga Building Material Supplier, above-said. The deceased Sanjay son of Sh. Jai Parkash received serious injuries and died on the spot. The postmortem examination on his body had been conducted vide PMR No. AC/13/12 dated 18.4.2012 issued by the Medical Officer, General Hospital, Jhajjar, Haryana. The postmortem examination was conducted by Dr. Amit Kumar, Choudhary, Medical Officer, General Hospital, Jhajjar (Haryana). An amount of Rs.25,000/- was spent on the transportation of the dead body of the deceased from the place of accident to Jhajjar and then Jhajjar to Kaunt and an amount of Rs.25,000/- was incurred on the last rites. The deceased was the sole son of the petitioners no.1 and 2 and was the sole brother of the petitioner no.3. All the petitioners were dependent upon the income of the deceased. He used to send almost*

> *his entire salary by directly depositing in the bank account of his father from Gurgaon, where he was serving as Manager, in the building Supplier Company and he had to be promoted very soon and his future prospects were highly bright as he was not only having amazing will power but also having full courage to fulfill his target well before the date fixed. The deceased Sanjay had joined M/s. Shiv Ganga Building Material Supplier, Gurgaon on 7.2.2011 as Assistant Manager at the monthly salary of Rs.10000/- but keeping in view his high performance his monthly salary was revised to Rs.20000/- with effect from 15.8.2011 and lastly he was promoted to the post of Manager with the effect from 1.1.2012 and his salary was revised to Rs.25000/- per month and thus, his performance was well recognized. Had the accident not been caused and deceased Sanjay would not had been died, he would had been promoted to even more higher post and his salary/ income would had been increased many folds. They prayed for the compensation of Rs.2 Crores, out of which an amount of Rs.1.5. Crores on account of loss of income, the amount already spent on the transportation of the dead body, funeral and in performing the last rites of the deceased and an amount of Rs.25 lakhs on account of unending pain and suffering for whole life and Rs.10 lakhs on account of loss of amenities of life, happiness and frustration in whole life as they only son of the petitioners no.1 and 2 and Rs.15 lakhs on account of love and affection and consortium along-with interest at the rate of 18% per annum from the date of filing of the petition till realization."*

4. Upon notice, respondents No.1 and 2 filed joint written statement raising preliminary objections that claim petition was false and frivolous and had been filed with an ulterior motive to extract money. It had been filed without any cause of action as respondent No.1 was holding a valid and effective driving licence and was an experienced driver and moreover, vehicle of respondent No.2 was fully insured with respondent No.3 at the time of the alleged accident. It was stated that claimants had not come with clean hands and suppressed true and material facts from learned Tribunal. Neither vehicle of respondent No.2 was an offending vehicle nor was respondent No.1 responsible in any manner for causing the said accident at all. It was submitted that answering respondents were not liable to pay any compensation to claimants and responsibility, if any, was there, respondent No.3 was liable for the same.

4.1. On merits, it was denied that monthly income of deceased was Rs.25,000/- per month. It was also submitted that a false case had been registered against respondent No.1. The other averments of claimants were denied. It was admitted that respondent No.2 was owner of the Tata 407 bearing registration No.HR63/1317, which was not an offending vehicle. It was also admitted that vehicle in question was insured with Shri Ram General Insurance Company Limited. The amount claimed in the petition was stated to be exaggerated. Claimants had filed the claim petition only to harass respondents No.1 and 2. They finally prayed for dismissal of the claim petition *qua* respondents No.1 and 2 with costs.

4.2. Respondent No.3-Insurance Company filed its separate written statement taking preliminary objections that petition was wrong and not maintainable in its present form. Claimants were estopped from filing petition by their own act and conduct. They had neither any locus standi to file petition nor any cause of action accrued to them for filing and maintaining the claim petition. The insured had violated the terms and conditions of the insurance policy inasmuch as he did not inform Insurance Company about the alleged accident. Under Section 134(c) of the Motor Vehicles Act, 1988, it was the duty of the owner to inform insurer about the accident. Claim petition was further opposed on other grounds available under Motor Vehicles Act and the terms and conditions of insurance policy and finally prayed for dismissal of the same with costs.

5. Learned Tribunal framed the following issues:

> "*1. Whether the accident took place on 17.4.2012 due to rash and negligent driving of Tata-407 bearing registration No. HR63/1317 by respondent No.1 Krishan Chander which resulted into death of Sanjay? OPP*
> *2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so how much and from whom? OPP*
> *3. Whether the claim petition is not maintainable in the present form? OPR*
> *4. Whether the insured has violated the terms and conditions of the insurance policy, if so its effect? OPR-3*
> *5. Whether the respondent No.1 was not having valid and effective driving licence at the time of accident, if so its effect? OPR-3*
> *6. Relief.*"

6. On appraisal of record/ evidence, learned Tribunal decided all the issues in favour of claimant/appellant No.1. However, claim of claimants No.2 and 3 was dismissed and claim of claimant No.1-mother of the deceased was partly allowed and she was held entitled for compensation of Rs.5,11,000/- along with interest @ 6% per annum from the date of filing of petition till its realization. The compensation amount was directed to be paid to petitioner No.1 in cash.

7. Learned counsel for appellant-claimants contends that learned Tribunal wrongly assessed income of the deceased as Rs.3,000/- per month, whereas he was working as Assistant Manager in a private company since 07.02.2011 and his consolidated salary was fixed as Rs.10,000/- per month as per appointment letter Exhibit PW2/A. Further, salary of deceased was enhanced by the company by Rs.20,000/- per month w.e.f. 15.08.2011. On 01.01.2012, deceased was also promoted as Manager and his salary was then fixed as Rs.25,000/- w.e.f. 01.01.2012. All this was duly proved by Exhibits PW2/B and PW2/C, respectively. Learned Tribunal wrongly applied deduction of ½ when there are three dependents of deceased. He further contends that amount on account of funeral expenses was on lower side. Also submits that learned Tribunal did not grant anything on account of loss of consortium, towards loss of love and affection and loss of estate. Interest granted by the learned Tribunal was also on lower side and compensation on account of all these heads needs to be awarded/ enhanced.

8. On the other hand, learned counsel for respondent No.3-Insurance Company opposes the appeal of the claimants.

9. I have heard learned counsel for the parties and perused case file.

10. Learned counsel for respondent No.3-Insurance Company vehemently supports the findings returned by learned Tribunal. He would urge that learned Tribunal has rightly disbelieved the salary certificate Exhibits PW2/H to

Ex.PW2/V as same being self-serving documents given by the maternal uncle of the deceased with the intent of seeking higher compensation. Without saying much, I am of the view that it is irrelevant whether salary certificate has been disbelieved or not. Deceased was 19-year old and was studying in B.A. (2nd year) and no doubt, he had a bright future ahead had he lived to fulfill his aspirations in pursuit of his higher aim in life, but for his untimely death caused by cruel hands of fate. At best, Insurance Company can urge that income ought to have been treated as notional even if certificate is to be disbelieved. Assuming income of the deceased to be notional, I am of the view that Rs.12,000/- per month is reasonable, given that death took place in the year-2012. Reference may be had to the Apex Court judgment rendered in ***Joginder Singh and another Vs. ICICI Lombard General Insurance Co. Ltd." CA-6291-2019 decided on 14.08.2019reported in 2019 ACJ 2783***, where in somewhat similar circumstances, when a young student of 20 years, who was undertaking a course in an air hostess training program. The Apex Court noted that the MACT had determined the monthly income as Rs.15,000/-when the accident took place in the year 2009.

11. I see no reason why in the present case monthly income of deceased cannot be taken as Rs.12,000/-, given that deceased herein was also 19 years, but had since died three years earlier.

12. Having heard rival contentions and on perusal of impugned award, I find that the submissions made by learned counsel for appellant-claimant before learned Tribunal were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the view taken by learned Tribunal.

13. 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 for the death of Sanjay alias Sonu deserves enhancement.

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

Deceased	Sanjay alias Sonu
Date of accident/death	18.04.2012
Age	18 years and 9 months
Claimants	Mother, father and minor sister
Income of the deceased	Rs.12,000/-
Future prospects	40% (Rs.12,000+4,800) = Rs.16,800/-
Deduction in dependency for personal expenses	1/2nd (16,800-8,400)=Rs.8,400/-
Annual dependency	Rs.1,00,800 /- (8,400 x 12)
Total loss of dependency with Multiplier of 18	Rs.18,14,400/-
Loss of Consortium	Rs.44,000/- x 3 = Rs.1,32,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total	Rs.19,79,400/- (Rs.18,14,400/- + Rs.1,32,000/- + Rs.33,000/-)
Compensation awarded by the Tribunal	Rs.5,11,000/-
Enhanced amount of compensation to be paid	**Rs.14,68,400/-** (Rs.19,79,400-Rs.5,11,000/-)

15. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interest@ 7.5% per annum, 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. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimant/appellant No.1.

16. In the premise, appeal filed by claimants stands disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 09, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No