216 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 4691 OF 2015 (O&M)

DATE OF DECISION: 17.05.2023

Malkit Kaur and another **…Appellants**
Versus
Karamjit Singh and another **…Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kishan Garg, Advocate for
Mr. Ashish Aggarwal, Advocate,
For the appellants.

Mr. Yagyashree Singh, Advocate for
Mr. Rajneesh Malhotra, Advocate,
For respondent No.2.

ARUN MONGA, J. (ORAL)

CM-14635-CII-2014

Despite ample opportunities, no reply has been filed. For the reasons mentioned in application, same is allowed and delay of 34 days in filing the appeal is condoned, subject to all just exceptions.

Main case

Little did deceased-Jasbir Singh know on the fateful day of 17.12.2012 while leaving for work as proprietor of his own business concern by the name and style of "Dimple Furniture House" that he would not return home in the evening where his wife and young 19-year old teenager son waited for dinner together, but they would only to get the news that he had been hit by a speeding car while standing on roadside with his bicycle. He was taken to hospital because of injuries suffered in the accident, where he succumbed to those injuries after struggling for life. Claimants are widow and son of deceased before this Court aggrieved by the inadequate amount of compensation awarded by learned Motor

Accidents Claims Tribunal, Amritsar (for brevity 'Tribunal') by disbelieving the claimants' version of deceased being a proprietor of the aforementioned shop but treating him merely as a skilled worker being a Carpenter. More of it later.

2. Succinct facts first.

2.1. On 17.12.2012 at about 7:30 p.m., Gurdial Singh and deceased Jasbir Singh were standing on their correct side of road at *kachha* path with their bicycles near Gurudwara Loh Sahib, village Heir, Ajnala. Suddenly one Swift car bearing registration No.PB-02-BS-4815, being driven in a rash and negligent manner by respondent No.1, came, its driver lost control over the vehicle and struck it against Jasbir Singh. Due to the impact of accident, Jasbir Singh fell down on road and received multiple grievous injuries. He was taken to Civil Hospital, Amritsar where he died. FIR No.49 dated 18.12.2012 was registered on the statement of Gurdial Singh. Claim petition was filed seeking compensation to the tune of Rs.50 lakh.

3. Upon notice, respondent No.1appeared and filed written statement denying the factum of accident. It was further stated that in case any accident had taken place, respondent No.2-Insurance Company is liable to pay compensation.

4. Respondent No.2-Insurance Company filed separate written statement stating that respondent No.1 was not having valid and effective driving license and therefore, Insurance Company is not liable to pay any compensation.

5. No rejoinder was filed.

6. From the pleadings of parties, following issues were framed by learned Tribunal:

1) Whether deceased Jasbir Singh son of Shri Nirmal Singh died in a motor vehicular which took place on 17.12.2012 at about 7:30 PM in the area of near Gurdwara Loah Sahib, village Heir, G.T. Road Ajnala, caused due to rash and negligent driving of Swift car bearing No.PB-02-BS-4815 by respondent No.1, Karamjit Singh ? OPP

2) Whether the petitioner/claimant is entitled to compensation, if so, the amount and from whom ? OPP

3) Whether respondent No.1 was not having legal and valid driving license at the time of accident, if so, its effect? OPR-2

4) Whether claim/petition is not maintainable? OPR-2

5) Whether terms and conditions of insurance policy were violated by deceased, if so, its effect? OPR-2

6) Relief.

7. On appraisal of record/evidence, learned Tribunal decided Issues No.1 and 2 in favour of claimants, while issue No.3 was decided against respondent No.2. Issues No.4 and 5 were decided against respondents. Consequently, claim petition was allowed and a sum of Rs.11,69,198.54 paise was awarded as compensation to be paid in equal shares to both claimants along with interest @ 8% per annum from the date of filing of petition till its realization.

8. Learned counsel appearing on behalf of appellants submits that learned Tribunal erred in disbelieving the cogent and convincing evidence adduced by claimants with regard to earnings of deceased as Rs.50,000/- per month from his business and assessed the income as Rs.7000/- per month, which is on lower side. He further submits that nothing has been granted on account of future prospects and a much higher multiplier ought to have been adopted by learned Tribunal while assessing compensation. He further points out that compensation of Rs.25,000/- awarded for funeral and last rites is also inadequate.

9. Per contra, learned counsel appearing on behalf of respondent No.2-Insurance Company opposes the appeal while supporting the Award of learned Tribunal. Income of deceased was correctly assessed by learned Tribunal as Rs.7,000/- per month, is the contention.

10. I have heard competing arguments of learned counsels for parties and have gone through the records with their assistance.

11. *Qua* the quantum of compensation, impugned Award is premised on the following reasoning:

> "x*xx*
> *12. During the course of arguments, learned counsel for the insurance company raised point that no cogent and convincing evidence has come to prove this fact that deceased was doing any business of furniture and he argued that the Ex.P3 which the claimants have brought in their evidence, no reliance can be placed upon it. This document nowhere reveals that at the time of death, deceased was proprietor of Dimple Furniture House, it is a document prepared by Bakshish Singh himself. It is a certificate alleged to be issued by Bakshish Singh to this effect that he is getting salary of Rs.10,000/- per month from Jasbir Singh.*
> *13. In my opinion, no reliance can be placed upon the said receipt. Except this document, no other document has been brought on record to prove this fact that deceased was doing any business of furniture. The claimants can bring on record the income tax returns, sale tax record or any other document, but no such documents have been brought on record. Even if the deceased was a skilled labourer, then for the purposes of computation of compensation, his income is assessed as Rs.7000/- per month. So, his income is taken to be that of a labourer i.e Rs.7000/- per month.*
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> *14. As he was survived by two legal heirs so after deducting 1/3rd on account of personal expenses, the contribution to the family comes to Rs.4666.66 paise per month and the yearly contribution comes to Rs.55999.92 paise. As per postmortem report, at the time of death, the deceased was 42 years of age and no rebuttal to this effect has come on file from the respondent's side. So at the time of death, his age is taken as 42 years. So applying the multiplier of 14 as per* ***Smt. Sarla Verma and others versus Delhi Transport Corporation & Anr. 2009 (3) RCR (Civil)*** *77, the amount comes to Rs.7,83,998.88 paise (Rs.55999.92 paise per annum x 14= Rs.7,83,998.88 paise)."*

12. Having heard the arguments, I am of the view that no doubt claimants did not adduce any documentary evidence to prove that the deceased was the sole proprietor of business concern Dimple Furniture House other than a self-serving statement of employee of deceased named Bakshish Singh vide Ex.P3 dated 21.07.2014. This document has been signed by said employee certifying that deceased was running his business under the name and style of Dimple Furniture House being its sole proprietor and said employee was being paid a salary of Rs.10,000/- per month and there were two more persons, namely, Kamaljit Singh and Satnam Singh, working as co-employees under employment of deceased who in turn was also stated to be having income of more than Rs.50,000/-. The aforesaid document was discarded by learned Tribunal on the ground that said document cannot be relied upon in the absence of any other evidence in support thereof. Learned Tribunal observed that Ex.P3 also does not establish as to how the deceased was the proprietor of Dimple Furniture House as it was prepared and signed by his employee.

13. Be that as it may, in the absence of any proof of either ownership of shop or proprietorship of furniture house, I am of the view that learned Tribunal rightly discarded the Certificate Ex.P3. In any event, it remained unimpeached and undisputed that deceased was working as carpenter at the time of his death and had also employed three workers under him, as stated by PW-3 Bakshish Singh in his testimony. In cross-examination, the same remained unimpeached. Thus, he stood by his version of deceased having employed three helper/carpenters under him.

13.1. In the premise, it is safe to assume that deceased was having well established business as a carpenter and not only he was selfemployed but had also offered employment to three helpers under him. As such, learned Tribunal committed patent error in determining the income of deceased at a meager sum of Rs.7000/- per month. Furthermore, though no Income Tax Returns of deceased were produced, but it cannot be treated as a straitjacket formula for rejecting the other evidence of income in the case of all skilled workers in the absence of documents showing taxable income. Thus, assessment of income of deceased equal to the minimum wages of a labourer done in this case, is quite on the lower side. Accordingly, it is held that deceased was earning at least Rs.10,000/- per month notionally.

14. In the premise, applying the principles in cases of Smt. Sarla Verma and others v. Delhi Transport Corporation and another[1], National Insurance Co. Ltd. V. Pranay Sethi[2] read with Magma General Insurance Co. Ltd. V. Nanu Ram @ Chuhru Ram and others[3], I am of the view that compensation for the death of Jasbir Singh deserves enhancement.

15. In view of above discussion, various computations qua each head are modified as below :

Deceased	Jasbir Singh
Date of accident/death	17.12.2012
Age	42 years
Monthly income of deceased	Rs.10,000/-
Future prospects @ **25%**	Rs.2500/-
Deduction in dependency for personal expenses @ 1/3rd	Rs.4166/-
Multiplier	14
Annual dependency	Rs.8334x12x14= Rs.14,00,112/-
Loss of consortium	Rs.44,000x2= Rs.88,000/-
Loss of estate and funeral expenses	Rs.16,500/-+Rs.16,500/-= Rs.33,000/-

[1] 2009 (3) RCR (Civil) 77
[2] 2017 (16) SCC 680
[3] 2019 (3) SCC (Crl.) 153

Total	Rs.15,21,112/-
Compensation awarded by Tribunal	Rs.11,69,198.54 paise
Enhanced amount of compensation to be paid	Rs.3,51,914 /-

16. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interest as awarded by the learned Tribunal from the date of filing of claim petition till actual date of payment. Same shall be payable to claimant within a period of two months of approaching the insurance company along with web print of instant order, failing which additional compensatory interest @ 3% per annum shall be paid from the date of filing the claim petition till its payment. Enhanced compensation amount after adjusting the compensation, if any already paid, be disbursed to claimants in equal shares.

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

MAY 17, 2023 **(ARUN MONGA)**
Shalini JUDGE

Whetehr speaking/reasoned : Yes/no

Whether reportable : Yes/no