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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-885-2014 (O&amp;M)

Date of decision: May 24, 2023

Prem Chand and others

....Appellants

versus

Sandeep Kumar and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Namit Sharma, Advocate for appellants.Mr. Nigam Bhardwaj, Advocate  
for respondent No.3-Insurance Company.

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**ARUN MONGA, J. (ORAL)****CM-2767-CII-2014**

Despite availing sufficient opportunities, no reply has been filed. For the reasons stated in application, same is allowed. Delay of 141 days in filing appeal is condoned, subject to all just exceptions.

**Main case (O&M)**

Appellants before this Court are claimants assailing impugned award dated 09.04.2013 rendered by learned Motor Accidents Claims Tribunal, Karnal (for brevity, "Tribunal") whereby claim petition filed by claimants was partly allowed and an amount of Rs.4,58,600 (round figure Rs.4,59,000/-) was awarded in favour of claimants No.1 and 2 in equal shares, along with interest @ 6% per annum from the date of filing of petition till actual realization.

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

*"2. Brief facts leading to the filing of this claim petition are that on 5.8.2011, deceased was going on motorcycle no. HR-5K-9859 and when he reached near "No Gaja Peer", the offending dumper no. HR-69-5866 being driven by its driver in a rash and negligent manner came from opposite side and hit the motorcycle and the present accident has taken place due to rash and negligent driving of*

*respondent no.1 and all the respondents are jointly and severally liable to pay compensation to the claimants. A case bearing FIR no.242 dated 5.8.2011 U/s 279/3044 IPC, Police Station, Butana was registered against respondent no.1.”*

3. Upon notice, respondents No.1 and 2 filed joint written statement and took preliminary objections of maintainability and suppression of material facts etc.

3.1. On merits, it was stated that no such accident took place and respondent No.1 had been falsely involved in this case. Respondent No.3 was insurer of the offending vehicle. It was stated that amount of claim was highly excessive and exaggerated; a false story had been concocted and no accident had taken place, as alleged.

3.2. Respondent No.3-Insurance Company filed its separate written statement and took same objections as were taken by respondents No.1 and 2. It denied that deceased sustained injuries in motor vehicular accident, as alleged. It was further averred that a false and concocted story was put forward by claimants. A false FIR had been registered with an ulterior motive to extract compensation from the answering respondent. With these pleas remaining averments were denied and prayed for dismissal of the claim petition.

4. Learned Tribunal framed the following issues:

- “1. *Whether the deceased Jasbir son of Prem Chand died in a road side accident which took place on 5.8.2011 at about 1.00/1.30 PM near NO Gaje Peer, Sandhir Road, P.S. Butana, because of rash and negligent driving of the respondent no.1 being driver of the offending vehicle bearing no.HR-69-5866? OPP.*
2. *If issue no.1 is proved in affirmative, whether the claimants are entitled for compensation. If so, to what amount and on what terms and conditions and from whom? OPP.*
3. *Whether the respondent no.1 was not having a valid and effective driving licence at the time of this accident and the vehicle in question was being plied. If so, to what effect? OPR.*

4. *Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect? OPR*

5. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 & 2 in favour of claimants. Issues No.3 and 4 were decided against respondent No.3. Consequently, claim petition filed by claimants was partly allowed and compensation of Rs.4,58,600 (round figure Rs.4,59,000/-) was awarded in favour of claimants No.1 and 2 in equal shares, along with interest @ 6% per annum from the date of filing of petition till actual realization.

6. Learned counsel for appellant-claimants contends that income of the deceased assessed as Rs.4,200/- per month was on lower side. He would urge that even if income is assessed on the basis of minimum wages, then too it ought to have been Rs.5,163.89 per month (for skilled worker) as per minimum wages applicable in the State of Haryana at the time of accident in question. He would further contend that learned Tribunal did not grant anything towards consortium to all claimants, loss of estate and funeral expenses, which ought to have been awarded. He would also urge that interest awarded to claimants on the compensation amount was also on lower side.

7. On the other hand, learned counsel for respondent No.3-Insurance Company opposes the appeal while supporting the award of learned Tribunal.

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

9. Having heard rival contentions and on perusal of impugned award, I find that the submissions made by learned counsel for respondent No.3-Insurance Company 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. Moreover, respondent No.3 has not filed any appeal or cross objections in the case.

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10. In view of the minimum wages *ibid*, I am of the view that income of the deceased deserves to be assessed as Rs.5,200/- (by rounding off Rs.5,163.89/-) per month being minimum wages for the skilled persons at the relevant time since deceased was working as a Carpenter.

11. Having heard learned counsel for the parties, and applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another<sup>1</sup>**, **National Insurance Co. Ltd. v. Pranay Sethi<sup>2</sup>**, read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others<sup>3</sup>**, I am of the view that claimants are entitled to receive compensation on account of death of Jasbir in motor vehicular accident, in the following terms:

|                                                         |                                                                 |
|---------------------------------------------------------|-----------------------------------------------------------------|
| Deceased                                                | Jasbir                                                          |
| Date of accident/death                                  | 05.08.2011                                                      |
| Age                                                     | 22 years                                                        |
| Claimants                                               | Mother, father, two sisters and one minor brother               |
| Income of the deceased                                  | Rs.5,200/- per month                                            |
| Future prospects                                        | 40% (Rs.5,200+2,080)<br>= Rs.7,280/-                            |
| Deduction in dependency for personal expenses (Parents) | 1/2<br>(7,280-3,640)=Rs.3,640/-                                 |
| Annual dependency                                       | Rs.43,680/- (3,640x 12)                                         |
| Total loss of dependency with Multiplier of 18          | Rs.7,86,240/-                                                   |
| Loss of Consortium (Parents, two sisters & brother)     | Rs.44,000/- x 5 = Rs.2,20,000/-                                 |
| Loss of estate & funeral expenses                       | Rs.16,500/- + Rs.16,500/- =<br>Rs.33,000/-                      |
| Total                                                   | Rs.10,39,240/- (Rs.7,86,240/- +<br>Rs.2,20,000/- + Rs.33,000/-) |
| Compensation awarded by the Tribunal                    | Rs.4,59,000/-                                                   |
| Enhanced amount of compensation to be paid              | <b>Rs.5,80,240/-</b><br>(Rs.10,39,240-Rs.4,59,000/-)            |

<sup>1</sup>2009 (3) The Punjab Law Reporter 22

<sup>2</sup>(2017) 16 SCC 680

<sup>3</sup>(2019) (3) SCC (Cri) 153

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12. Accordingly, impugned award is modified to the extent of above computations. Entire compensation shall be payable to claimants along with interest @ 7% 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 compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation *qua* consortium, amount after adjusting the compensation, paid already, if any, be disbursed to claimants No.3 to 5 along with interest in equal proportion of Rs.44,000/- each.

The remaining compensation amount along with interest shall be disbursed to claimants No.1 and 2 (parents of deceased) equally as determined by learned Tribunal.

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

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

(ARUN MONGA)  
JUDGE

May 24, 2023  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No