IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO 7519/2015 &
FAO 7753/2015**

Date of decision: 28.3.2023

FAO 7519/2015

Magma HDI General Insurance Co. Ltd. ………..Appellant

Vs.

Bimla Devi and others ………..Respondents

AND

FAO 7753/2015

Bimla Devi and others ………..Appellants

Vs.

Surender and others ………..Respondents

CORAM: **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rajneesh Malhotra, Advocate for the appellant-Insurance Company.

Mr. Jainainder Sain, Advocate for respondents/claimants 1 to 4.

None for Respondents 5 and 6. Earlier respondent no.6 represented by Mr. DS Punia and further these respondents proceeded against ex parte vide order dated 27.2.2018 in connected appeal bearing FAO 7753/2015

Nidhi Gupta,J.

This common order, with the consent of ld. Counsel for the parties, shall dispose of aforesaid two appeals bearing FAO No.7519/2015 filed by Insurance Company and FAO 7753/2015 filed by claimants/respondents 1 to 4 herein having arisen out of Award dated 16.7.2015 passed by Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal')in MACT Petition No.132/2014 u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'), as the facts, arguments and question of law involved in both these appeals are identical.

However, for the sake of convenience, parties are being referred to by their litigative status in FAO No.7519/2015 filed by the Insurance Company.

Ld. Tribunal vide aforesaid Award granted compensation of Rs.13.84 lacs to claimants/respondents No.1 to 4 herein along with interest @ 7.5% per annum from the date of filing of claim petition till realisation, on account of death of Raj Kumar in a motor vehicular accident that took place on 19.4.2013.

On appraisal of pleadings and evidence before it, ld. Tribunal held that deceased Raj Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 19.4.2013 due to rash and negligent driving of Dumper bearing registration No.HR-61-9256 (hereinafter referred to as the 'offending vehicle') being driven by respondent no.5, owned by respondent no.6 and insured by appellant herein. Respondents/claimants 1 to 4 are widow and three minor children of deceased Raj Kumar. Respondents 5,6 and appellant herein were held jointly and severally liable to pay the compensation.

Ld. Counsel for the appellant Insurance Company assails the impugned Award primarily on the ground of (a) quantum, (b) that the driver of the offending vehicle did not possess a valid and effective driving licence on the date of accident; and (c) that the involvement of the offending vehicle itself is doubtful.

It is submitted by the ld. Counsel for the appellant Insurance Company that the date of accident is 19.4.2013 and that FIR No.68 dated 19.4.2013 under Sections 279, 337-A IPC was registered against the driver of the offending vehicle at PS Behal (District Bhiwani) wherein it has been clearly stated that one Gulab Singh was driving the offending vehicle at the time of accident. It is submitted that subsequently respondents/claimants collusively changed the name of driver to respondent no.5 herein namely Surender instead of Gulab Singh. It is submitted that this was done as it was discovered that the said Gulab Singh did not possess/hold a valid and effective driving licence and nor was he authorised to drive the offending vehicle. It is submitted that accordingly all the respondents colluded together in order to claim and share the compensation. It is further submitted that ld. Tribunal is in patent error in ignoring the fact that initially in the said FIR, Gulab Singh is mentioned as driver of the offending vehicle who caused the accident and it was only in the final report dated 28.4.2013 filed by the police where the name of respondent no.5-Surender was subsequently introduced which is in clear contradiction of the FIR. It is submitted that even as per Ex.R1, statement of complainant Rajesh-PW2, it is recorded that initially FIR was got registered against Gulab Singh.

As regards quantum it is submitted that the amount of compensation of Rs.13.84 lacs awarded by the ld. Tribunal is highly excessive in view of the fact that the income of the deceased was not proved on record. It is submitted that accordingly ld. Tribunal is in error in taking income of the deceased to be Rs.9,000/- per month without there being any proof. It is submitted that as per minimum wage Notification applicable at the relevant time, income of the deceased ought to have been taken as Rs.7,000/- per month.

It is further submitted that the ld. Tribunal has awarded a total sum of Rs.2.5 lacs under conventional heads to the four claimants. It is submitted that this is also on the higher side.

In response, it is submitted by the ld. Counsel for the respondents 1 to 4/claimants that said Gulab Singh was admittedly Cleaner of the offending vehicle. It is submitted that the FIR was recorded on the basis of statement of PW2 Rajesh who by way of supplementary statement Mark A had clarified that it was not Gulab but Surender who was driving the offending vehicle.

It is further submitted that ld. Tribunal has granted nothing by way of future prospects and as the deceased was 43 years at the time of his death an addition of 25% ought to have been made towards future prospects.

No other argument has been raised on behalf of the parties.

Heard ld. Counsel for the parties.

Perusal of the record of the case shows that undisputedly, initially FIR was registered on the basis of statement of PW2 Rajesh against Gulab Singh. Further, as submitted by the ld. Counsel for the claimants, as per supplementary statement Mark-A of the complainant-PW2 Rajesh, it has been clarified that it was not Gulab Singh but Surender who was driving the offending vehicle at the time of accident.

It has further come on record that RW2 Krishan admitted in his cross examination that he was handing over tools to Raj Kumar who was beneath the offending vehicle and was repairing the same when respondent no.5—Surender driver boarded and started the offending vehicle due to which Raj Kumar came beneath the offending vehicle and died on the spot. Furthermore, as per testimony of RW1 HC Manish Kumar, it has been clarified that name of the driver of the offending vehicle was changed subsequently due to supplementary statement Mark A of PW2 Rajesh as also during investigation it was found that actually it was respondent no.5 who started the offending vehicle resulting into the accident and even the final investigation report dated 28.4.2013 contains the name of respondent no.5 Surender as driver of the offending vehicle. Accordingly, in my view there is sufficient material on record to establish that the driver of the offending vehicle at the time of accident was respondent no.5 Surender. Admittedly driving licence of Surender is on record as Ex.P4 as per which he was authorised to drive offending vehicle-LMV-TRV Rigid Chassis. Accordingly, argument of the ld. Counsel for the appellant Insurance Company that the driver of the offending vehicle did not hold valid and effective driving licence is rejected.

As regards quantum of compensation, a perusal of the impugned Award shows that though it was pleaded case of the claimants before the Tribunal that the deceased was a skilled mechanic of heavy automobiles and earing Rs.25,000/- per month, however claimants did not place any documentary evidence to prove the alleged income of the deceased. As such I find no error in the notional assessment of income of Rs.9,000/- by the ld. Tribunal.

Admittedly deceased was 43 years of age at the time of his death as borne out from the Post Mortem Report, Ex.P2. Accordingly, as per law laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, an addition of 25% is justified to be made to the income of the deceased towards future prospects. By adding 25% (being Rs.2250/-) monthly income of the deceased comes to Rs.9,000+2,250/-= Rs.11,250/- and annually it comes to Rs.1,35,000/-. Claimants being four in number, deduction of 1/4th is made i.e.

Rs.33,750/-. Thus the total annual dependency comes to Rs.1,01,250 and applying the multiplier of 14, the total dependency comes to Rs.1,01,250x14=14,17,500/-. The claimants, under the conventional heads are awarded Rs.44,000/- as spousal consortium; and Rs.44,000x3= Rs.1,32,000/- towards parental consortium; Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses. The claimants are also held entitled to interest @ 7.5% on the enhanced compensation. The compensation as reworked hereinabove, is tabulated as under:-

Sr.No.	Head	Awarded by the Tribunal (in Rupees)	Reworked in present appeal (in Rupees)
1.	Monthly Income	9000	9000
2.	Future prospects	-	2250
3.	Deduction towards personal expenses	1/4th	1/4th
4	Multiplier	14	14
5.	Loss of total dependency	9000-2700x12x14=11,34,000	9000+2250x12-1/4x14= 14,17,500/-
6.	Spousal consortium	1,00,000/-	44,000/-
7.	Parental consortium	1,00,000/-	44,000x3=1,32,000/-
8.	Loss of Estate	Nil	16,500/-
9.	Funeral & transporation expenses	25,000/-	16,500/-
10.	Litigation Expenses	25,000/-	25,000/-
11.	Total	13,84,000/-	16,51,500/-
12	Enhanced amount	2,67,500/-	

The manner of apportionment, mode of disbursement and rate of interest remains unchanged.

In net result, the appeal filed by the Insurance Company bearing FAO 7519/2015 is **dismissed** while the appeal filed by claimants bearing FAO7753/2015 is **allowed** in above terms.

A copy of this order be placed on the file of FAO No. 7753 of 2015.

28.3.2023 **(Nidhi Gupta)**
Joshi/ps-I **Judge**