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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7129-2016 (O&M)
Date of decision: 10.02.2023

Rajesh and another

….Appellants

versus

Tarun and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kulvir Narwal, Advocate and
Mr. Satish Kumar, Advocate,
For the appellants.

Mr. Dinesh Kumar Prajapati, Advocate,
For respondent No.3-Insurance Company.

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ARUN MONGA, J. (ORAL)

Aggrieved by Award dated 22.12.2015 rendered by Motor Accidents Claims Tribunal, Jhajjar (for short 'the Tribunal'), claimants have preferred the instant appeal for enhancement of compensation.

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

On 19.07.2014, Rahul along with Sukhender Singh S/o Randhir R/o Village Sheria was going to Rohtak from his Village Sheria. When at about 2.20 PM, they reached on Madana Chowk, Jhajjar Rohtak Road, a Swift car being driven by Respondent No.1 in a rash and negligent manner and at very high speed came from Jhajjar side and respondent No.1 struck the car into the motorcycle as a result of which Rahul fell down on the road and received injuries. He was taken to PGIMS Rohtak but he was declared dead. The registration number of the car was noted as HR-12/V-8908 and the driver fled away from the spot leaving the car at the spot. On the statement of Sukhender Singh, the FIR was lodged against respondent No.1. The accident took place due to the sole fault, rash and negligent driving of respondent No.1 who is also owner of the said car."

3. Upon notice, respondent No.1-Tarun owner-cum-driver filed written statement wherein he took preliminary objections regarding maintainability, locus standi, claim petition being bad for non-joinder and mis-joinder of necessary parties etc.

3.1. On merits, he submitted that no accident took place with the offending vehicle, as alleged by claimants. The vehicle in question is duly insured with respondent No.2 and if any compensation is awarded to the claimants then the insurance company is liable to pay the same.

4. Respondent No.2-Insurance Company took the preliminary objections including the violation of terms and conditions of insurance policy. On merits, it denied the allegations pertaining to factum of accident with the offending vehicle. It is submitted that accident in question had taken place due to fault of the deceased himself.

5. No replication was filed by claimants and on the basis of pleadings of the parties, learned Tribunal framed the following issues:

> "*1) Whether accident under reference took place due to rash and negligent driving of vehicle bearing registration No.HR-12V-8908, as alleged by the petitioner?OPP*
>
> *2. Whether petitioners are entitled to get compensation amounting to Rs.50,00,000/- along with interest as prayed for? OPP*
>
> *3. Whether respondent No.1 was not holding valid and effective driving licence at the time of accident?OPR-3*
>
> *4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy, Route Permit etc? OPR-3*
>
> *5. Relief."*

6. On appraisal of record/evidence, learned Tribunal decided Issues No.1 and 2 in favour of claimants and Issues No.3 and 4 were decided against respondent No.3 but awarded compensation of Rs.8,31,000/- along with interest @7.5 % in favour of claimants.

7. Learned counsel for appellants submits that deceased was 18 years of age at the time of accident and was a student of 10+2. Learned Tribunal has taken the monthly income of deceased@ Rs.7000/- p.m. which is even below the minimum wages in Haryana and same deserves to be modified as a student of class 10+2 cannot be equated with a labourer. He relies on Apex Court's judgment in case titled "***S.***

Vasanthi and another Vs. M/s Adhiparasakthi Engg. College and another", decided on 11.10.2022*, wherein it has been held as below:*

> ***"****11. It could thus be seen that the deceased S. Sathiyanarayan was twenty three years of age at the time of accident. He was a qualified engineering graduate and was pursuing an MBA degree at SRM University to further his professional capabilities. In view of the specific averments made in the affidavit as to the employment prospects of the classmates of the deceased S. Sathiyanarayan and also his young age at the time of the accident, we are of the considered view that the Tribunal and the High Court have erred in not giving due weightage to the same. Had the deceased S. Sathiyanarayan not met with the unfortunate accident, he would have surely drawn a salary equivalent to that of his classmates or at least an amount near the said amount. Furthermore, the deceased was the only issue of the appellants. Since no parent should have to suffer through the death of their children, much less their only child, we are of the considered view that the monthly income as calculated by the High Court is inadequate.*
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> *12. Thus, we find that the compensation to be paid on account of the death of deceased S. Sathiyanarayan ought to be worked out by enhancing his monthly income to Rs.30,000/-. However, we find that, since he was the only child of the appellants, in view of paragraphs (31) and (32) of the judgment in the case of Sarla Varma (Smt.) and others Vs. Delhi Transport Corporation and Another, as upheld by 2 (2009) 6 SCC 121 a Constitution Bench decision in the case of National insurance Company Limited Vs. Pranay Sethi and others, 50% of the amount would have to be deducted as personal and living expenses. We further find that, insofar, as the loss of consortium is concerned, an amount of Rs.40,000/- will have to be awarded."*

8. Per contra, learned counsel for respondent No.3-Insurance Company strenuously relies on Apex Court's judgment in civil appeal No.448-2018 dated 19.01.2018 titled ***"Shri Nagar Mal and others Vs. Oriental Insurance Company Ltd. and others"*** reported as ***2018 (5) R.C.R. (civil) 202.***

9. Having addressed the rival contentions for some time, both the learned counsels at a later stage jointly suggest that the award under challenge be modified to the limited extent of taking the income of deceased @ Rs.8000/- per month and in terms of "***National Insurance Company Limited Versus Pranay Sethi and others 2017(16) SCC 680***, read with "***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram decided on 18.09.2018***." They have given a consented calculation chart duly signed by them, which is taken on record and marked as Annexure 'A'.

10. In view of the aforesaid and on the suggestion of learned counsels, the impugned award is modified and compensation payable to the claimants is computed as under:

deceased	Rahul
Date of accident/death	19.07.2014
Age	18 years
Income	Rs.8000/-
Future prospects @40%	8,000+3,200=11,200/-
Deduction @ 50% for personal expenses	11,200-5,600=5,600/-
Multiplier	18
Annual dependency	5,600x12x18=12,09,600/-
Loss of consortium	44,000x2=88,000/-
Loss of Estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	Rs.13,30,600/-
Compensation already awarded by MACT	Rs.8,31,000/-
Enhanced Amount	Rs.4,99,600/- along with interest as awarded by learned Tribunal

11. Accordingly, the impugned award is modified in terms of the above computations. The balance compensation after deducting what has already been paid shall be paid to the claimants within a period of 2 months of approaching respondent No.3 with web print of this order failing which further penal interest @ 3% per annum shall be leviable in addition to what has already been awarded by learned Tribunal below.

12. Disposed of accordingly.

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

(ARUN MONGA)
JUDGE

February 10, 2023
Vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No