238 **2023:PHHC:063352**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-132-2017 (O&M)
Date of decision: 02.05.2023

SUNITA DEVI AND OTHERS …Appellants

VS

SHAKUNTLA DEVI AND ANOTHER …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sushil K. Sheoran, Advocate,
For the appellants.

Mr. Ankur Gupta, Advocate,
For respondent/Insurance Company.

****

ARUN MONGA, J. (ORAL)

Aggrieved by inadequate compensation, the claimants (widow, son, daughter and mother of deceased Ajay, the accident victim) have assailed herein an Award dated 28.07.2016 rendered by learned Motor Accidents Claims Tribunal, Bhiwani (for brevity, "Tribunal"), seeking enhancement thereof.

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

> *"3.…On the fateful day Bhale Ram alongwith his son Deepak, Yawan (since deceased), Ajay (since deceased) son of Dharambir, Dharmabir (since deceased), Payal (since deceased) daughter of Suresh Kumar, Ishwar (since deceased) son of Harbhajan were returning from Khatuji Shyam Ji after praying to their village Miran on 20.06.2013 in a vehicle bearing registration No.HR- 17A/1717, being driven by Ajay (since deceased) son of Dariya Singh. At about 9.00 a.m when they reached in the area of village Mandasi, meanwhile bus bearing registration No.RJ-18PA/3855 being driven by its driver rashly and negligently was coming from opposite direction and coming on wrong side struck straight with the Scorpio and due to heavy impact, all the occupants of Scorpio alongwith drivers of Scorpio and bus and some other occupants of the bus suffered injuries on their person. Seven occupants of the Scorpio and Bus died at the spot. Bhale Ram and his*

> *daughter Deepika sustained multiple injuries on their respective persons. The accident occurred due to rash and negligent driving on the part of Bus driver A case bearing first information report (herein after referred to as "FIR" in short) 84 dated 20.06.2013 under sections 279/337/304-A, of IPC was registered at police station Mukandgarh District Jhunjunu (Raj.) on the statement of Zile Singh."*

3. Upon notice of the claim petition, respondents No.1 and 2 contested the same before learned Tribunal.

3.1 Respondent No.1-Owner of the alleged offending vehicle raised preliminary objections regarding non-maintainability, locus standi and cause of action etc. It was averred that no accident took place. False FIR was lodged in connivance with police. Rest of the averments of the claim petition were also denied.

3.2 Respondent No.2-Insurance Company in its written statement also denied the factum of accident and involvement of bus in question in the alleged accident. It was pleaded that driver of the offending vehicle was not holding a valid and effective driving licence. Alleged vehicle was not insured at the time of accident. It was averred that accident had taken place in State of Rajasthan and therefore, learned Tribunal has no territorial jurisdiction to entertain. All the averments of the claim petition were denied too.

4. Based on the rival pleadings, learned Tribunal framed the following issues:

> *1.Whether accident causing death of Deepak, Ajay, Payal, Yawan, Ajay son of Dharambir, Ishwar Singh, Dharambir and injuries to Bhale Ram and Deepika took place on 20.06.2013 due to rash and negligent driving of bus No.RJ 18PA-3855 by its driver who died in the accident in question, as alleged?OPP.*

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so to what amount and from whom?OPP

3. Whether the driver of offending vehicle namely Ajay son of Daiya Singh was not having a valid driving licence at the time of accident?OPR

4Whether the claim petitions are not maintainable in the presentform?OPR

5. Whether the claimants have no locus standi to file the present claim petitions? OPR

6. Relief."

5. On appraisal of record/evidence, issue Nos. 1, 2, 3 and 4 were decided in favour of claimants and respondents No.1 and 2 were held jointly and severally liable to pay the compensation to claimants. Consequently, compensation of 13,46,000/-was computed and awarded in favour of claimants.

6. I have heard the competing contentions of both learned counsel and have gone through case file with their assistance.

7. Learned counsel for the appellant-claimants argues that learned Tribunal had taken notional income of Ajay deceased as Rs.6000/- per month but deceased was earning Rs.2,12,800/- as gross annual income as per the income tax return Ex.PW5/A. He submits that learned Tribunal rejected this plea on the ground that source of income is not mentioned in the income tax return. He further submits that income tax return is the latest one i.e. of the year 2012-2013 as accident took place in the year 2013. Therefore, the income ought to be considered as per the income tax return i.e., Rs.17,733/- + 50% increase. Nothing has been given on account of consortium.

8. Per contra, learned counsel for respondent No.2-Insurance Company would argue that deceased Ajay had no regular source of income and as such, claimants are not entitled to any compensation in this case.

Ex.PW5/A Income Tax Return does not prove his actual income and what business he was doing. Claimants could not prove his income and at best, he can only be treated as a labourer.

9. I have heard the rival contentions. First and foremost fact is that respondent No.2 has not either filed any appeal or cross objections to assail the findings of learned Tribunal.

10 No doubt, generally guiding principle to determine the average monthly income of a deceased victim is broadly taken as mean of the three consecutive income tax returns filed for 3 years immediately preceding his death. However, in the present case, one income tax return filed by deceased could be obtained by claimants as they did not have access to his previous years' returns. As per income tax return Ex.PW5/A, the annual income of the deceased is admittedly shown as Rs.1,78,700/- which corresponds to be Rs.14,833/-per month.

11. Notwithstanding, learned Tribunal considered him as daily wager and his income was determined as Rs.6000/- per month. I am of the view that in the present case even if the benefit of income on the basis of income tax return was not to be given in entirety but at the same time learned Tribunal fell in manifest error in summarily treating him as a daily wager instead of looking at the nature of his business being carried out and life style, owing a luxury vehicle Scorpio (a sports utility vehicle), as is borne out from unimpeached testimony of PW-8 his widow. In course of hearing of instant appeal, testimony of said Sunita Devi is taken on record and marked as Annexure A-1. Registry to tag the same at appropriate place. For ready reference, same is reproduced herein below:

"Evidence/statement by way of affidavit (PW-8)

I, Sunita Devi, aged 35 years, widow of Ajay son of Dariya Singh, resident of Ward No.8, Siwani, Tehsil Siwani Distt. Bhiwani, do hereby solemnly affirm and declare as hereunder:

Ajay husband of the deponent and father of the claimants No.2 and 3 Ankur and Parul, who are minors and son of Birmati claimant No.4, was a businessman, dealing in supply of woods as well as maintaining milk dairy and also owner of Scorpio No.HR-17A-1717. He also was holding valid driving license. The date of birth of the deceased Ajay was 10-12-1976. The annual income of the deceased Ajay was Rs.2,12,800/-. He was income tax assessee and was holding PAN AGYPJ5817A. The petitioners are the only legal heirs of the deceased Ajay and they were solely dependent upon the income of the deceased Ajay. The deceased Ajay alongwith the family of Dharambir and others were traveling in his Scorpio No.HR-17A-1717 which was being driven by him. The accident took place on 20-06-2013 at about 9-00 AM within the area of village Mandasi at a distance towards North 12.0 KM heat No.2 VCNB No.22 Police Station Mukandgarh District Jhunjhunu (Raj) due to rash and négligent driving of driver of Bus bearing No.RJ-18-PA-3855. The deceased Ajay suffered multiple and grievous injuries, which were ante-mortem in nature and sufficient to cause death. The autopsy of the dead body of the deceased Ajay was conducted by Medical officer, Govt BDK Hospital, Jhunjhunu, vide PMR No.1423 dated 20-06-2013. Certified copy of PMR is Ex PW8/1 Rs.2,00,000/- approximately were spent on funeral and rites ceremonies. FIR No.84/13 dated 20-6-2013 under section 279, 337, 304-A IPC was registered with Police Station Mukandgarh District Jhunjhunu (Raj) against driver of Bus bearing No.RJ-18-PA-3855, who died in the accident. The petitioners are entitled to the compensation of Rs.50,00,000/- (Rupees Fifty lakhs only) in lump sum plus interest @18% per annum from the date of filing the petition till realization on account of loss of income, loss of consortium and predominantly happy married life to the claimant No.1, compensation for mental and physical agonies, suffering caused to the family members of the deceased, expenses of transportation of dead body, funeral expenses, last rites ceremonies and other factors from the respondents, who being the owner and insurer of the offending vehicle, are jointly and severally liable to pay compensation to the petitioners in respect of the death of the deceased Ajay. Receipt of income tax return filed by the deceased Ajay

> *for the year 2012-13 is already on file and copy of income tax return of year 2013-14 is Mark-X.*
>
> ***XXX XXX XXS***
>
> ***Statement of PW-8 Sunita Devi dated 18.05.2016***
>
> *I was not present at the time of accident and as such I cannot tell the mode of accident in which it had occurred. The income of my husband was two lack/2,50,000/- per annum from dairy farming and supply of timber. I have not brought any proof in this regard. My husband was middle fail in education. I have not brought any certificate regarding date of birth of my husband e.c. (examination certificate) issued by the Birth and Death Department. Self stated date of birth of my husband might be mentioned in the income tax return which has already been produced with my affidavit. I do not know about the contents of income tax return Mark-X as it was filed by our C.A.Sh. Parmod Sharma, who is alive and is residing at Siwani. I do not know how much income has been shown in the mark-X income Tax Return. I have not brought any proof in respect of expenses of Rupees two lac spent on funeral and last rites ceremony as I had not maintained the accounts in this regard. My father in law Dariya Singh has already expired prior to the death of my husband. My Jeth Anand Kumar had told me regarding this accident since I was not travelling in scorpio in question. So I cannot tell who driving the said vehicle as how many persons were travelling in the said vehicle. Ajay my husband was having D/L to drive Scorpio and I shall produce the same on the next date. It is wrong to suggest that my husband not earning 2,00,000/2,50,000/- per anum or that he was not proficient driver and was not having any valid D/L. It is also wrong to suggest that I have filed false affidavit or that I have deposed falsely."*

12. In the cross examination, aforesaid testimony of her husband's income remained unimpeached and unshattered. There is no rebuttal to it.

13. Learned counsel for respondent-Insurance Company contends that solitary income tax return cannot be the basis of determining the income @ Rs.14,833/- per month, as there is no proof of conclusive income of past 3 years.

14. As already discussed hereinabove that the mean income of the past 3 years is merely a guiding principle and not a straightjacket formula

and in each case, income has to be determined on its own facts and circumstances, nature of business as well as the lifestyle of deceased.

15. In view of the discussion herein above, partly accepting the arguments of learned counsel for respondent Insurance Company, I am of the view that given the lifestyle of deceased and nature of his business also taking into consideration, the income tax return for the year-2013 as a guesstimate, his income in the overall premise can be assessed at Rs.12,000/- p.m.

16. In view of the foregoing discussion, 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**, computation of compensation under various heads is determined/modified as below:

Name of deceased	Ajay
Date of accident	20.06.2013
Age	35 years
Income	Rs. 12,000/- p.m.
Future prospects @ 40	Rs.4800/-
Total	Rs.16,800/-
Multiplier	16
Total	Rs. 16,800X12x16= 32,25,600/-
Loss of consortium	44,000 x 4=1,76,000/-
Loss to estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
Total	**Rs. 34,46,600/-**
Already awarded compensation	Rs. 13,46,000/-
Enhanced amount of compensation	**Rs. 20,88,600/-**

17. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along

with interest, as awarded by learned Tribunal, 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 amount after adjusting the compensation, if any already paid, be disbursed to claimants as per manner indicated in the award of learned Tribunal but in the following proportions:

a) Claimant No.1 Sunita Devi widow= 50%

b) Claimant No.4 Birmati, mother=10%

c) Claimants No.2 and 3 minor children=20% each.

18. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

02.05.2023
Vandana

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