

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

FAO-8589-2015 (O&M)

Date of Decision: February 17, 2023

The New India Assurance Company Limited

...Appellant

VERSUS

Smt.Suman Sharma and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.C.Gupta, Advocate
for the appellant.

Mr.Deepak Khurana, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 07.09.2015 passed by learned Motor Accident Claims Tribunal, whereby, compensation has been granted to claimant-respondent, on account of death of her son Sudhir Sharma, in a motor vehicular accident.

On appraisal of the evidence adduced, learned Tribunal had awarded compensation to the extent of Rs.15,33,252/- to respondent No.1-claimant.

Being aggrieved with the Award, so passed, the insurance company has filed the present appeal.

As per the version, put forth by respondent No.1-claimant, on

13.02.2013, Sudhir Sharma (deceased) along with Davinder Singh-respondent No.2 was going to Patiala, via Bathinda-Mansa-Patiala road. When they reached near village Gharoch, District Sangrur, at about 10.00 pm, the car, in which they were travelling, driven by Davinder Singh, in a rash and negligent manner, became out of control and struck against the standing tree, as a result whereof, Sudhir Sharma, received multiple injuries, which proved fatal. Rashness and negligence has been imputed upon Davinder Singh, who was respondent No.1 before the Tribunal.

However, the respondents-driver and owner, have denied the accident, in toto. Rather, the insurance company, in its separate reply, had though, denied the accident, but had also asserted that as per rapat No.20 dated 14.02.2013, which was recorded, on the basis of the statement of Davinder Singh-respondent, due to the fault in the engine of offending vehicle, it became out of control and struck against the tree. On this account, the liability cannot be fastened upon the insurance company.

Now, at the very outset, learned counsel for the insurance company has submitted that the fact of accident, being the outcome of rashness and negligence, on the part of Davinder Singh, who was on driver's wheel, as such, does not stand established. No satisfactory evidence, relating to the imputation of rashness and negligence, on the part of Davinder Singh, driver, as such, has been led. Rather, the accident was result of mechanical fault in the offending vehicle.

Besides the same, it is also submitted that earnings of the deceased have been taken by learned Tribunal, on higher side. Though, no satisfactory evidence, relating to the extent of earnings, was led and

therefore, computation, on the basis thereof, has also resultantly come on a higher side. Also, it is submitted that compensation granted under the head of loss of consortium and funeral expenses, is on higher side. Even, compensation under the head of loss of love and affection had been granted, which could not be granted. Thus, a prayer has been made for acceptance of the appeal and reduction of the compensation, so awarded.

On the contrary, learned counsel for respondent No.1-claimant has submitted that the fact of accident, as such, stands amply established, from the evidence, adduced on record. Even, the compensation, so worked upon, is just and reasonable. Though, now, as per the prevalent law, certain amounts have to be reduced, on account of loss of consortium and funeral expenses, but however, the reduction is not to be made, via-a-vis, extent of salary, as now submitted. As such, a prayer has been for dismissal of the appeal.

So far as, the fact of accident is concerned, it is pertinent to mention that Suman Sharma, mother of deceased Sudhir Sharma, has stepped into witness box as CW-1. She has categorically stated about her son Sudhir Sharma, to be occupant of the car bearing registration No.PB-30G-0133, which was driven by Davinder Singh, who was respondent No.1 before the Tribunal. She has also categorically stated that the abovesaid car was driven by Davinder Singh, in a rash and negligent manner and it became out of control and struck against a tree, as a result whereof, Sudhir Sharma had sustained injuries, which proved fatal. Besides the same, also she has stated about rapat No.20 dated 14.02.2013, to have been registered at Police Station Sangrur, regarding the aforesaid accident.

Considering the aforesaid evidence, it is pertinent to mention that though, driver and owner of the offending vehicle, in their reply, had denied the accident, in toto, but however, driver of the offending vehicle namely Davinder Singh, was the best person, who could substantiate the manner of taking place of the accident, but however, he had chosen to remain away from the witness box. DDR No.20 dated 14.02.2013 has come on record as Ex.C2. Even though, on the basis thereof, learned counsel for the insurance company had taken the plea about the accident, to be the result of mechanical fault and as such, no liability could be fastened upon the insurance company, but however, it is pertinent to mention, as already noted aforesaid, the driver as well as the owner of the offending vehicle have not bothered to step into the witness box. There is total denial of the accident, on their part. Moreover, no sustenance can be drawn from DDR Ex.C2, as this was got recorded, on the statement of Davinder Singh, who was on the driver's seat, at the relevant time. Considering the same, this self serving statement, proves to be of no help to the appellant, who is insurer of the offending vehicle, as Davinder Singh, driver, has not stepped into witness box. Even, the insurance company has not bothered to examine him as a witness, so as to substantiate the plea of accident to have taken place, due to mechanical fault. But anyhow, the fact of accident, as such, stands established from the recitals of the DDR, coupled with the statement of Suman Sharma. In fact, looking at the manner of striking of the car, which fact, is spelt out from the DDR also and also considering the kind of injuries sustained by Sudhir Sharma, which proved fatal, this in itself speaks about the role, so assigned to Davinder Singh-respondent No.2

Thus, the findings recorded by learned Tribunal, qua rashness and negligence, on the part of driver Davinder Singh, while driving car bearing registration No.PB-30G-0133, stands affirmed.

Now, coming to the avocation followed by the deceased. CW-2 Rajesh Kumar, who is Supervisor of National Bulk Handling Corporation Limited, Branch Office, Bathinda, has been examined, who brought salary slip of Sudhir Sharma, being employee No.NBHC-01259 for the month of December 2012, January 2013 and February 2013, which are Ex.CW2/A to Ex.CW2/C. Even though, only salary slips, as such, have been proved, but however, these cannot be discarded, as now submitted by learned counsel for the insurance company. As per the version of the claimant-respondent No.1, the deceased was working as Godown Supervisor. In the aforesaid salary slip Ex.CW2/C i.e. slip for the month of February 2013, the salary which was to be received was Rs.8749/-, which is rounded off as Rs.8750/- In view of the aforesaid salary slips and the deceased, allegedly working as Senior Supervisor, his income, as such, has not been rightly considered as that of labourer.

From the evidence adduced, it stands amply established that the deceased was 28 years, at the relevant time. In the year 2013, the standard income tax exemption was upto Rs.2 lakh. The salary of the deceased does not fall within the taxable bracket. As such, earnings of the deceased has to be taken as Rs.8750/-. However, the Tribunal has considered the salary of deceased as Rs.8550/-, which is on lower side. Considering the same, the compensation, so worked upon by learned Tribunal, requires re-computation, not only on account of extent of earnings, but also, on account

of addition of future prospects, now to be made and also on further components of the compensation. The compensation, so granted under the head of loss of consortium as well as funeral expenses, are on higher side. Even though, the compensation has been granted under the head of loss of love and affection, but however, it is not to be now granted, as per prevalent law.

Considering the aforesaid, the compensation, so worked upon by learned Tribunal, requires re-appraisal.

The earnings of the deceased were Rs.8750/- at the relevant time. Since, the deceased was bachelor, reduction of 50%, on account of personal expenses, has to be made, which comes to Rs.4375/-

Now, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of future prospects, has to be made, to the salary, so worked upon. Considering the age of the deceased, 40% addition has to be made as future prospects, which comes to Rs.1750/- and after adding this amount, the salary comes to be Rs.4375+1750=Rs.6125/-.

As per *Smt.Sarla Verma case (supra)*, considering the age of the deceased to be 28 years, which is so established, the suitable multiplier to be applied is '17'. After applying the multiplier of '17', the compensation is worked upon as Rs.6125x12x17=Rs.12,49,500/- per annum.

Besides the aforesaid, it is pertinent to mention that in *Magma General Insurance Company Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(18) SCC 130* and *United India Insurance Company Ltd. vs. Satinder Kaur alias Satvinder Kaur and others, 2020 SCC Online 410*, it

has been laid down by the Hon'ble Supreme Court that consortium is not limited to '**spousal consortium**' and it also includes '**parental consortium**' and '**filial consortium**'. It was held that apart from spousal consortium, 'parental' and 'filial' consortium is also payable. Endorsing this view, in *The New Assurance Company Limited vs. Smt.Somwati and others, Civil Appeal No.3093 of 2020, decided on 07.09.2020*, the conclusion given in the impugned judgments of the High Court, awarding consortium to each of the claimants, was held to be in accordance with law, which does not warrant any interference in the case under consideration.

In *Pranay Sethi's case (supra)*, the extent of consortium which should be paid is stated to be Rs.40,000/- to each of the claimant and for funeral expenses, it is Rs.15,000/-, which requires 10% enhancement, after a period of three years, which has since passed by. In the light of the same, respondent No.1-claimant, is entitled to compensation, on the count of **loss of consortium** to the extent of Rs.44,000/-. Besides the same, Rs.16,500/- is to be paid as funeral expenses.

Thus, loss of dependency comes to be Rs.12,49,500/-, loss of consortium comes to be Rs.44,000/- and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be Rs.13,10,000/-.

In view of the aforesaid discussion, the present appeal stands allowed. The compensation, so awarded by learned Tribunal, is reduced from Rs.15,33,252/- to Rs.13,10,000/-.

The compensation, so now worked upon, shall be paid to respondent No.1-claimant, within a period of six weeks from today along with interest as ordered by learned Tribunal, failing which, the claimant

shall be entitled to interest at the rate of 9% per annum, from the filing the claim petition, till its realization.

February 17, 2023
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE

Yes
Yes/No