IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 994 of 2016
Reserved on : 01.12.2022
Pronounced on: 28.02.2023

RAMAN KUMAR AND ANR.

... Appellants

Versus

JATINDER SINGH AND ORS.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Naveen Sharma (Moudgil) Advocate, for the appellants.

Mr. Abhinav Singla, Advocate
for respondent No.3-Insurance Company.

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SANJIV BERRY, J.

Instant appeal has been preferred by the claimants-appellants against the award dated 28.09.2015 passed by the Motor Accident Claim Tribunal, Jalandhar (hereinafter referred to as ' the Tribunal').

2. The facts relevant to the present *lis* are that the claimants, who are the parents of the deceased Om Saran, had filed the claim petition stating therein that on 7.5.2013 at about 10.30 p.m. Om Saran was on his motorcycle bearing registration No. PB-36-D-3420 when he was hit by a truck bearing registration No.PB-09-L-9460 driven by Jatinder Singh-

respondent No.1 in a rash and negligent manner, as a result, the deceased died on the spot and FIR No. 53 dated 8.5.2013 was registered at Police Station Sadar Phagwara District Kapurthala.

3. Claimants filed claim petition before the learned Tribunal to arrive at just conclusion placed on record income and age proof and also made reference to various judgments on the subject.

4. The claim petition was contested by the respondent No. 1 and 2, on the ground that the same was not maintainable and asserted that the accident had taken place due to the rash and negligent driving of motor-cycle bearing registration No. PB36-D-3420 by deceased Om Saran.

5. The Respondent No. 3 Insurance Company, *inter alia*, contends that respondent No.1 Jatinder Singh was not holding a valid and effective driving license at the time of the alleged accident and the truck bearing registration No. PB-09-L-9460 was not holding a valid route permit and fitness certificate.

6. On the basis of the pleadings and the evidence on the record, the Tribunal established that deceased Om Saran had died in a motor vehicle accident due to the rash and negligent driving of respondent No.1 Jatinder Singh and he was 21 years of age at the time of the accident and working as Cashier in AIRPLAZA RETAIL HOLDINGS PVT. LTD (Vishal Mega Showroom) opposite Bus Stand, G.T. Road Phagwara, District Kapurthala, and getting ₹8925/- per month as salary. In order to prove income of deceased, the claimants had examined PW2 Ravinder Kumar, an official from AIRPLAZA RETAIL HOLDINGS PVT. LTD, who has testified that

salary of deceased Om Saran was 8925/- in March 2013 after giving bonus (Ex. P-10) and ₹6890/- in April 2013 (Ex. P-9). PW2 had placed on record the details of salary of deceased Om Saran for the period from October 2012 to May 2013 as Ex.P-11. By calculating the salary drawn by deceased Om Saran during these eight months, the average salary of deceased comes to ₹5650/- per month. PW2 had further stated that salary of the employees had increased from time to time and bonus was given thrice a year. After considering the future prospects of the deceased to the extent of 15%, the tribunal calculated the income of the deceased as ₹6497.50 per month. The deceased was unmarried. Had he married in near future, he would have had to spend half of his income on his wife, children and on himself. By deducting this amount, the dependency of claimants, thus, comes to ₹3248.75 per month, which further comes to ₹38,985/- per annum.

7. The learned Tribunal after hearing, assessed the age of deceased at the time of his death as 21 years and as per law laid down by Hon'ble Supreme Court in ***Smt. Sarla Verma and others versus Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77***, and in ***Pushkar Mehra Versus Brij Mohan Kushwaha and others 2014 92) RCR (Civil) 4***, applied the multiplier of 17 and the dependency of the claimants was calculated as ₹38,985/- x 17 = ₹6,62, 745/-, ₹1,00,000/- for loss of love and affection, ₹25,000/- for Funeral expenses and ₹1,00,000/- for loss of consortium. Learned Tribunal vide impugned order dated 28.09.2015 awarded the following compensation and held the respondent-Insurance company liable to pay compensation amount to the claimants jointly and severally :-

Sr.No.	Heads	Compensation Awarded
1	Income	₹ 38985/-
2	Deduction	-
3	Multiplier	₹38,985/- x 17 = ₹6,62,745/-
4	Loss of consortium	₹ 1,00,000/-
5	Funeral Expenses	₹ 25,000/-
6	Loss of Love and affection	₹ 1,00,000/-
	Grand Total	₹ 8,87,748/-
	Interest	7.5% per annum

8. Learned counsel for the appellants contend that the learned Tribunal had awarded compensation on lower side. He contends that deceased Om Saran was 21 years of age and working as a cashier and getting ₹8925/- per month salary in March, 2013 and learned Tribunal had assessed the monthly income as ₹5650/- per month which is on lower side and the multiplier of 17 was applied, where as, it is, to be 18. In support of his contentions, he referred to the law laid down by Hon'ble Supreme Court in ***National Insurance Co. Ltd. V. Pranay Sethi & Ors. (2017) 16 SCC 680, Sarla Verma and others V. Delhi Transport Corporation and another (2009) 6 SCC 121, Krishan Gopal and another v. Lala and others, 2013 (4) RCR (Civil) 276, United India Insurance Company Ltd. V. Satinder Kaur @ Satwinder Kaur (SC) Law Finder Doc Id #1729112 and also in Sunita Devi and another v. Vijay Pal and others", (Punjab & Haryana) Law Finder Doc ID # 1100951*** and prayed for enhancement of the award and acceptance of the appeal.

9. Learned counsel representing the insurance company submits that the Tribunal has rightly assessed the average salary and adequately

awarded the compensation. However, he contends that the insurance company is not liable to make any payment as the driver of the offending vehicle was not having valid and effective driving license at the time of occurrence, hence he prays for dismissal of the appeal.

10. After considering the rival contentions and perusing the record, it transpires that the accident had taken place on 07.05.2013 due to rash and negligent driving on part of respondent No.1 in driving the offending vehicle, resulting in the death of 21 years old boy namely Om Saran.

11. As regards the arguments raised by the learned counsel for the insurance company qua the driver of offending not having valid and effective license is concerned, it is observed that this aspect has been dealt by learned Tribunal while deciding issue No. 3 and 4 vide the impugned award. The Insurance Company has not brought any evidence to show that the respondent No.1 was not holding effective and valid driving license or that the offending vehicle was not having road permit. The onus to prove the same was upon the insurance company but despite taking sufficient opportunity insurance company has failed to prove. It is observed that there is no infirmity qua the learned Tribunal deciding these issues against the Insurance Company.

12. With regard to loss of Estate, Funeral Expenses and Filial compensation, learned counsel for the Insurance Company contends that as according to ***'Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and ors.' (2018) 18 SCC 130*** and ***Pranay Sethi's case (supra)*** loss of estate and funeral expenses and loss of love and affection

shall be decreased.

13. The learned Tribunal has assessed rightly assessed the monthly income of the deceased at Rs.5650/- per month as there is no fixed salary and same was assessed after taking average of salary drawn by the deceased in last eight months. It is settled in ***Pranay Sethi's case*** **(supra)** and ***Magma's case (supra)*** 40% of the salary would be added as future prospects, which would amount to ₹2260/- in the present case. Therefore, total income per month comes to ₹7910/- per month and 50% deduction towards personal and living expenses of the deceased would come out to ₹3955/- per month and as per ***Magma's case*** **(supra)** loss of Estate and funeral expenses would be ₹16500/- respectively and ₹44000/- each to claimant appellant would be awarded as a filial consortium.

14. As a result of the aforesaid discussion, the award requires enhancement and as such, the claimants are held entitled to the following enhanced compensation as detailed in the table as under:

Sr. No.	Heads	Compensation Awarded
1.	Income	₹5,650/-
2.	Add Future prospect (40%)	₹2260/-
3.	Monthly income after deduction (50%)	₹3955/-
4.	Total yearly income	₹47460/-
5.	Multiplier of 18 (₹47460 *18)	₹ 854280/-
6.	Loss of estate	Rs.16,500/-
7.	Funeral expenses	Rs. 16,500/-
8.	Filial Compensation (Rs.44,000 each)	Rs. 88,000/-
	Total Compensation	**Rs. 9,75,280/-**
	Interest	7.5% per annum

15. The amount of the enhanced compensation aforesaid shall be

payable with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization after deducting the amount of compensation if any, paid during course of proceedings.

16. Accordingly, the appeal is allowed and the award dated 28.09.2015 passed by Motor Accident Claims Tribunal, Jalandhar, is hereby modified in above terms.

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

(SANJIV BERRY)
JUDGE

28.02.2023
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i) Whether speaking/reasoned? Yes/No
ii) Whether reportable? Yes/No