Sr. No.279

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4234-2022 (O&M)
Date of Decision: 22.02.2023

Oriental Insurance Company Limited ...Appellant

Vs.

Sanjay and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Jaiswal, Advocate
for the appellant.

Mr. Padamkant Dwivedi, Advocate
for respondents No.1 and 2.

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ARUN MONGA, J. (ORAL)

Aggrieved with Award dated 14.07.2022 rendered by learned Motor Accidents Claims Tribunal, Panchkula (for brevity, Tribunal), appellant/Insurance Company is before this Court by way of an appeal seeking quashing of Award.

2. Claim petition was filed by respondent Nos.1 and 2/claimants for seeking compensation on account of death of wife and daughter of claimant No.1 and mother and sister respectively of claimant No.2, in a motor vehicular accident that took place on 01.01.2019.

3. Upon notice, driver and owner of the offending vehicle and appellant Insurance Company contested the claim petition. All the material averments of claimants were denied and the amount of compensation claimed was stated to be highly exaggerated.

4. Learned Tribunal framed the following issues:

> "*1. Whether the accident in question resulting into the death of Divya daughter of Sanjay Kumar; and Seema wife of Sanjay Kumar took place on 01.01.2019 in the area of Police Station Lalru on account of rash and negligent driving of respondent No.2 while driving the Mini Bus bearing registration No.PB-65-M-7088 as alleged? OPP*

> 2. *If issue No.1 is proved in the affirmative, then what amount of compensation, the claimants of both the claim petitions are entitled to and from whom? OPP.*
>
> 3. *Whether the offending vehicle is being plied with contravention of the terms and conditions of the insurance policy as alleged? OPR-3*
> 4. *Relief."*

5. On appraisal of record/evidence, learned Tribunal decided issues No.1 and 2 in favour of claimants and issue No.3 against appellant Insurance Company. Consequently, claimants were awarded compensation of Rs.17,34,000/- on account of death of daughter of claimant No.1 and Rs.18,01,000/- on account of death of wife of claimant No.1 along with interest @ 6% per annum from the date of institution of respective petitions till realization.

6. Learned counsel for appellant/Insurance Company while relying upon judgment of Supreme Court in ***Sarla Verma vs. Delhi Transport Corporation (2009) 6 SCC 121*** argues that the Tribunal fell in manifest error of law in granting 1/3rd deduction of the income towards personal expenses of Ms. Divya given that deceased was an unmarried girl of 17 years of age. Relevant part of the judgment *ibid* is reproduced herein below:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and*

> *large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

7. Having gone through the judgment rendered in Sarla Verma's case *ibid* coupled with the fact that age and status of the deceased is not disputed, it seems that there has been error on the part of learned Tribunal in granting the benefit of 1/3rd deduction of the income towards personal expenses. The same ought to have been 1/2 of the income instead.

8. Learned counsel for respondent Nos.1 & 2 has also not been able to dispute this fact.

9. In the premise, applying the principles in the cases of ***Sarla Verma's case*** (supra), ***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***, I am of the view that impugned award warrants interference.

10. In view thereof, various computations *qua* each heads is modified as below:

Deceased	Divya
Date of accident/death	01.01.2019
Age	17 years
Marital Status	Unmarried
Claimants	Father and younger sister
Annual Income	Rs.96,000/-
Add 40% towards future prospects	Rs.1,34,400/-
Income after ½ deduction	Rs.67,200/-
Multiplier	18
Loss of filial consortium @ Rs.44,000/- each	Rs.88,000/-
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,000/-
Total	Rs.13,30,600/-
Compensation awarded by the Tribunal	Rs.17,33,800/-
Compensation reduced	Rs.4,03,200/-

11. Consequently, the appeal is disposed of and the award is modified in terms of above computations qua the claim pertaining to the death of Ms. Divya.

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

(ARUN MONGA)
JUDGE

February 22, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No