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

**FAO-4685-2017 (O&M)
Reserved on:08.05.2023
Date of Pronouncement:15.05.2023**

Pushpa & others ... Appellants

Vs.

Sahab Singh & others ... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Sumit Gupta, Advocate for the appellants.

Mr. Vinod Chaudhri, Advocate,
for the respondent No.3/insurance company.

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SUKHVINDER KAUR, J.

1. By way of this appeal, appellants/claimants seek modification of the award dated 15.11.2016 in Claim Petition No.90 of 2015 vide which the Tribunal has granted a total compensation of Rs.11,07,800/- on account of death of Nafe Singh S/o Ram Kishan in the accident in the question along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

2. The relevant facts are that on 27.03.2015, Nafe Singh (since deceased) S/o Ram Kishan along with his brother Sat Narain was going on foot to his house, after completing his work in the fields. When he reached near Satnasar Gate on Jhajjar-Badli Road then a bus bearing registration No.HR-63-B-7106 (hereinafter to be referred to as 'the offending vehicle')

driven by respondent No.1/Sahab Singh at a high speed, in a rash and negligent manner, came from the front side and directly hit into Nafe Singh. Due to this, Nafe Singh received multiple and grievous injuries on his person. The driver did not stop his bus and ran away from the spot. At the time of the alleged accident, one Nafe Singh S/o Bhagwan Singh, R/o Jahangirpur was going in his car and had also witnessed the accident. Deceased was then shifted to PHC, Jahangirpur and thereafter, to General Hospital, Jhajjar. Thereafter, due to his serious condition, he was referred to PGIMS, Rohtak, where he was declared dead by the doctors of PGIMS, Rohtak. Post mortem on the body of Nafe Singh was conducted on 28.03.2015. In this connection, FIR bearing No.226, dated 28.03.2015, under Sections 279/304-A IPC was registered at Police Station Jhajjar against respondent No.1 (driver of the offending vehicle) on the statement of Sat Narain (brother of the deceased).

3. It has been averred that at the time of the accident, age of the deceased was about 42 years. He was serving as Munshi/Clerk with Aarti Bhatta Company, Jahangirpur, Tehsil and District Jhajjar and he was getting salary of Rs.12,000/- per month. He also used to cultivate his land measuring two acres and was running a milk dairy in the village and earning Rs.18,000/- per month. His total earnings were Rs.30,000/- per month from all the sources.

It was also averred that the claimants have incurred a sum of Rs.50,000/- on transportation and last rites of the deceased and they were all dependent upon the income of the deceased. Due to his untimely death, they suffered great mental shock and financial loss. It is further averred that respondent No.1 being driver, respondent No.2 being owner and respondent No.3 being insurer of the offending vehicle, are jointly and severally liable to pay compensation to the claimants. By way of the claim petition, sum of Rs.50 lakhs along with interest @ 24% from the date of the accident till the realization has been sought as compensation from the respondents.

4. Respondents have contested the claim petition and filed their separate written statements.

Respondent No.1 in his written statement has denied the accident as well as involvement of the vehicle in question in the accident in question. He has pleaded that the offending vehicle was insured with respondent No.3/insurance company by covering all possible monetary risks and liabilities. As such, dismissal of the claim petition was prayed.

Respondent No.2 (owner of the offending vehicle) in his separately filed written statement has also denied the factum of the accident and raised preliminary objections regarding maintainability of the claim petition and non-joinder of necessary parties. He pleaded that the vehicle in question was insured with the insurance company and respondent No.1/driver has the valid and effective driving license. He has also prayed for dismissal of the claim petition.

Insurance company/respondent No.3 has also filed its separate written statement. It also raised preliminary objections regarding *locus-standi* of the claimants, concealment of facts and has denied the factum of the accident and involvement of the vehicle in question in the accident in question and also pleaded that respondent No.1 was not holding the valid and effective driving license at the time of the alleged accident. Therefore, a prayer for dismissal of the claim petition was raised.

5. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

6. After considering the evidence available on record and the submissions made on behalf of the appellants, learned Tribunal has partly allowed the claim petition i.e. Claim Petition No.90 of 2015 and has awarded a sum of Rs.11,07,800/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation.

7. Feeling dissatisfied with the award dated 15.11.2016, the appellants/claimants have preferred the instant appeal seeking enhancement of the compensation.

8. Learned counsel for the appellants has contended that the Tribunal has rightly decided issue No.1 in favour of the appellants that accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No.1 resulting into death of Nafe Singh but while deciding other issues qua assessment of compensation, the Tribunal has totally misconstrued the statutory provisions enshrined under the Motor Vehicles Act. The Tribunal has not awarded anything on account of love and affection to the minor children as well as old mother of deceased Nafe Singh. He has contended that though money cannot be the substitute for a father/son but the adequate amount awarded to the minor children for loss of love and affection as well as to old mother would be helpful to them for their

survival. He has urged that under the other conventional heads of transportation and funeral expenses, very meagre amount has been awarded which is also liable to be enhanced. Tribunal has wrongly taken income of the deceased less than the minimum wages, though it has been duly proved on record that deceased was earning more than Rs.30,000/- per month. He has argued that the rate of interest that has been granted is also on the lower side and interest at the rate of 18% per annum should have been granted from the date of the accident and not from the date of the claim petition. He has prayed that by way of accepting the present appeal, the impugned award passed by the Tribunal be modified and the compensation awarded vide the impugned award be enhanced.

9. On the other hand, learned counsel for respondent No.3/ insurance company has contended that no record has been produced by the claimants that deceased Nafe Singh was working as an accountant at Aarti Bhatta Company, Jahangirpur. No appointment letter or attendance register has been produced. He has further contended that it is also not proved that the deceased was earning Rs.18,000/- per month by running a milk dairy and from cultivation of land. He has argued that already the excessive compensation has been granted by the Tribunal. The future prospects to the income of the deceased were to be added at the rate of 25% but the Tribunal has added the same at the rate of 30% of the income. The excessive amount has been awarded also under the conventional heads. By relying upon the judgment in **Shri Ram General Insurance company & others Vs. Bhagat Singh Rawat, Civil Appeal Nos.2410-2412/2023 (SLP (C) Nos.11669-11671/2020)**, he has contended that the claimants are to be granted a sum of

Rs.40,000/- in total, under the head of loss of consortium. He has submitted that the present appeal is liable to be dismissed and the excessive amount that has been granted is required to be reduced.

10. There is no dispute regarding finding of the Tribunal upon issue No.1 that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by its driver in which deceased Nafe Singh lost his life. Only enhancement in the compensation has been sought by the appellants/claimants.

11. The claimants have alleged that Nafe Singh was aged about 42 years who was working as Munishi/Clerk with Aarti Bhatta Company, Jahangirpur (Jhajjar) and was getting Rs.12,000/- per month and was also earning Rs.18,000/- per month from cultivation of land and by running a milk dairy and in this way, his total earning were Rs.30,000/- per month.

12. In support of their plea, the claimants have examined PW3 Ranbir Singh, Proprietor of Aarti Bhatta Company, who produced on record the salary certificate of the deceased as Ex.P8. Perusal of his testimony reveals that in his examination-in-chief, he has stated that he had seen the salary certificate Ex.P8 which is bearing his signatures and it had been prepared as per record being maintained at the brick kiln. However, in his cross-examination, he has admitted that he had not brought any attendance register and appointment letter pertaining to the deceased and then stated that no appointment letter was being issued. The Tribunal has thus rightly held that when the said witness had not produced any other evidence i.e. the appointment letter, attendance register and salary certificate record, showing that deceased had ever worked as Munshi/Clerk at his brick kiln and was

being paid salary of Rs.12,000/- per month, then it has not been proved that deceased was working as Munshi/Ckerk at Aarti Bhatta Company, Jahangirpur at salary of Rs.12,000/- per month. Even that record has not been produced, from which PW3 alleged to have prepared the salary certificate Ex.P1. No such record has been produced which was allegedly prepared by the deceased while working as Clerk/Munshi at the brick kiln. The Tribunal has thus rightly held that the claimants have not been able to prove from Ex.P1 that deceased was working as Clerk/Munshi at the brick kiln at a salary of Rs.12,000/- per month. The case law cited by learned counsel for the appellants in **New India Assurance Company Limited Vs. Saroj & others, 2023 (1) Law Herald (P&H), 684**, is not applicable to the facts of the case in hand. In the cited case, the deceased was employed with the department and as such his salary was proved by producing on record his pay slip but in the instant case the deceased was allegedly employed with a private person at his brick kiln. So in the absence of other relevant evidence just from Ex.P1, the alleged employment and income of the deceased from the said employment is not proved.

Similarly, no relevant record has been produced in order to prove that deceased was running a milk dairy and was selling milk to the villagers. Tribunal has rightly observed that just from the registration acknowledgements Ex.P10 to Ex.P12 showing that the deceased was having the buffaloes which he got registered under the Mukhya Mantri Gramin Dudharu Pashudhan Suraksha Yozna, it is not proved that deceased was indulging in selling milk to the villagers and was having income from the same. Tribunal has further rightly observed that in the absence of any other evidence just from the Jamabandi for the year 2011-12 Ex.P9, it not proved that deceased was having income from agricultural pursuits.

13. So when the income of the deceased as alleged by the claimants has not been proved, then the Tribunal has rightly taken the monthly income of the deceased as Rs.6000/- per month. As per the voter card of the deceased, his date of birth has been mentioned as 35 years as on 01.01.2008. As accident took place on 27.03.2015 so age of the deceased at the time of the accident was about 42 years. Even as per the claimants also, deceased was about 42 years of age at the time of his death in the accident. As per the post mortem report Ex.P1, age of the deceased has been shown as 45 years. The Tribunal has thus rightly held that as such the deceased was in the age group of 40-50 years. The Tribunal has further held that keeping in view the age of the deceased, the addition of 30% to the actual income of the deceased was to be made while computing the future prospects. After adding 30% on account of future prospects, total monthly income of the deceased has been taken as Rs.7800/- (6000 + 1800). As the deceased left behind four legal heirs i.e. his widow, two sons and his old mother, the Tribunal has rightly deducted $1/4^{th}$ of the monthly income of the deceased towards his personal expenses and has taken monthly dependency as Rs.5850/- (7800 – 1950) and in this way, has taken the annual dependency as Rs.70,200/- (5850 X 12). Keeping in view the ratio of law laid down in **Sarla Verma Vs. Delhi Transport Corporation & others, 2009 (6) SCC 121**, multiplier of 14 has been rightly adopted by the Tribunal by considering the deceased within the age group of 41-45 years and the total compensation has been assessed as Rs.9,82,800/- (70200 X 14).

14. From the perusal of the award, it transpires that though income of the deceased has been rightly taken as Rs.6000/- per month, the deduction of 1/4th of income has also been rightly made and multiplier of 14 has also been rightly applied but the Tribunal has erroneously added 30% of the income of the deceased to the actual income of the deceased while computing the future prospects whereas keeping in view the ratio of law laid down in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009,** 25% of the actual income of the deceased was to be added while computing the future prospects.

15. Further perusal of the award reveals that Rs.1 lakh have been granted for loss of consortium and Rs.25,000/- have been granted under the head of funeral expenses and in this context, the Tribunal has relied upon the judgment rendered in **Rajesh & others Vs. Rajbir Singh & others, 2013 (ACJ) 1403.** But as per ratio of law laid by the Hon'ble Apex Court in the case of **Pranay Sethi (supra),** Rs.40,000/- are to be granted as consortium, Rs.15,000/- are to be granted towards loss of estate and Rs.15,000/- are to be given towards the funeral expenses. So under the conventional heads also excessive amount has been awarded by the Tribunal.

16. As the excessive amount has already been granted by the Tribunal while computing the future prospects and under the conventional heads, there is no scope for enhancement in the present appeal, so the instant appeal i.e. FAO-4685-2017 is dismissed. So far as

the excessive amount that has been awarded by the Tribunal is concerned, as no cross appeal or cross-objections have been filed by respondent No.3/insurance company, I do not find it proper to grant such benefit to it by reducing the said amount.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

15.05.2023
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No