

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

FAO-5355-2017 (O&M)

Reserved on:19.04.2023

Date of decision:26.04.23

United India Insurance Company Ltd.

... Appellant

Vs.

Anita & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ram Avtar, Advocate for the appellant.

Respondents proceeded against *ex parte* vide order dated
11.12.2017.

...

SUKHVINDER KAUR, J.

By way of this appeal, appellant-Insurance Company seeks setting aside/modification of the award dated 07.02.2017 in MACT Case No.20 of 2014 – CIS No.MACP/1822/2014 vide which the Tribunal has granted a total compensation of Rs.24,51,631/- on account of death of Surender Kumar in the accident along with interest @ 9% per annum from the date of filing of the claim petition till realization.

2. Anita widow of deceased Surender Kumar filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short 'the 1988 Act') claiming compensation with the averments that on 11.03.2014 at about 6:30 P.M., deceased Surender Kumar and his son Kuldeep Singh were standing on the side of Bus Stand Uchana, Tehsil and District Karnal. In the meanwhile, the offending car bearing registration No.CH-01AN-0539 being driven by respondent No.1/Ashish Vohra in a

rash, negligent and careless manner without following the traffic rules and norms and at a high speed, came from Delhi side and straightway struck against Surender Kumar. Due to the impact of the accident, Surender Kumar fell down and sustained serious, multiple and grievous injuries. From the place of the accident, deceased was taken to General Hospital, Karnal by Kuldeep Singh in a private ambulance and then he was shifted to Virk Hospital, Karnal. But unfortunately, on the same day, he succumbed to the said injuries and his post mortem was conducted by the doctors on duty at General Hospital, Karnal. It was averred that the present accident took place due to rash and negligent driving of the offending vehicle. FIR No.188 dated 12.03.2014 was got registered against respondent No.1 at Police Station Sadar Karnal. It was further averred that deceased was 50 years of age at the time of his death in the accident. He was having good health prior to the accident. He was drawing the salary of Rs.43,000/- per month. He was working as a tractor driver in Market Committee, Taraori. Claimant was fully dependant upon the income of the deceased as her sons are married and are residing separately. All the three daughters are also married and they are settled at their respective matrimonial homes. Deceased was rendering his services to his family in a big way and was looking after his family in a proper manner. He was very hard working and a skilled driver. With his sudden death, claimant has not only been deprived of his services but also lost consortium and love and affection of her husband. For the pecuniary and non-pecuniary loss suffered by the claimant, it was prayed that compensation of Rs.80 lakhs be granted qua death of the deceased Surender Kumar.

3. Respondent No.1 was proceeded against ex parte by the Tribunal vide order dated 03.07.2014, whereas respondent No.2 Ajay Kumar Vohra appeared and contested the petition by filing a written statement raising preliminary objections regarding maintainability of the petition; the petition being bad for mis-joinder and non-joinder of necessary parties and suppression of true and material facts etc. On merits, it was submitted that the petitioner and her relatives have got registered the FIR on false and frivolous facts and happening of the accident as alleged by the claimant was denied. It was also submitted that the amount claimed by the claimant was highly excessive, exorbitant and without any criteria. It has been averred that the vehicle in question was insured with the respondent No.3/Insurance Company at the time of the alleged accident. So respondent No.3 was liable to indemnify the award, if any, in the present case.

4. Respondent No.3/Insurance Company filed separate written statement by taking a plea that no such accident had taken place as alleged and a false claim petition has been filed by the claimant in collusion with respondents No.1 and 2 to grab money from respondent No.3. It was further submitted that respondent No.1 was not holding any effective and valid driving license at the time of the alleged accident and the vehicle in question was being plied in violation of the terms and conditions of the Insurance Policy. Rest of the claims of the petition were denied and the Insurance Company prayed for dismissal of the petition.

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 submissions made on behalf of the parties, learned Tribunal partly allowed the claim petition and awarded a sum of Rs.24,51,631/- as compensation to the claimant along with interest @ 9% per annum from the date of filing of the petition till the realization. Respondents No.1, 2 and 3 were held jointly and severally liable to pay the compensation.

7. Feeling dissatisfied with the award dated 07.02.2017, the appellant-Insurance Company has preferred the instant appeal. In the instant appeal, the respondents were proceeded against as ex-parte vide order dated 11.12.2017 when despite being served, none came present on their behalf.

8. I have heard learned counsel for the appellant and have perused the relevant record minutely.

9. Learned counsel appearing for the appellant-Insurance Company has contended that the learned Tribunal has gravely erred on facts as well as in law while deciding the claim petition vide the impugned award dated 07.02.2017. He has contended that the Tribunal has awarded excessive and exorbitant compensation to the claimant ignoring the well settled law laid down by the Hon'ble Supreme Court in **Sarla Verma Vs. Delhi Transport Corporation & others, 2009 (6) SCC 121**, for computing the compensation in case of death of a government employee. The Tribunal has wrongly added 30% future prospects by considering the age of the deceased as 50 years, when the claimants have not produced any birth certificate of the deceased on record. He has further argued that the Insurance Company has examined RW1 Sanjeet Kumar, AR Market Committee, Taraori, who has stated that Surender Kumar had expired on 12.03.2014 and he was to

retire on 30.04.2018. So from the statement of RW1, it is proved that deceased was 54 years of age at the time of accident and not 50 years old as taken by the Tribunal. He has contended that as per law laid down by the Hon'ble Supreme Court in the case of **Sarla Verma (supra)**, no future prospects are to be added after the age of 50 years in case of death of a government employee.

10. He has further argued that the Tribunal has also wrongly applied multiplier of 13 while computing the compensation, despite the fact that the deceased was to retire from service after 4 years. The Tribunal should have applied a split multiplier of 11 i.e. multiplier of 4 on salary and 7 on loss of 50% pension and the multiplier of 13 adopted by the Tribunal on the salary is liable to be set aside. He also urged that the Tribunal has awarded interest @ 9% per annum whereas the same should not be more than 6% and has prayed that the impugned award may be set aside/modified in view of the above contentions.

11. By way of the present appeal, the accident in question has not been challenged. So it stands established that deceased has died as a result of the accident in question. So there is no dispute with regard to the finding given by the Tribunal on 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.

12. Perusal of the award reveals that the learned Tribunal has taken the age of the deceased as 50 years by taking into account the post mortem report Ex.P3. It has also been specifically mentioned in Para No.12 of the award that claimant-Anita, while stepping into the witness box as PW1, has

also deposed that at the time of death of her husband-Surender Kumar, he was 50 years of age. It has also been specifically pointed out by Tribunal that the respondents have not objected to the age of the deceased at any stage of the proceedings.

The deceased Surender Kumar tractor driver was held to be an employee of the Haryana State Agricultural Marketing Board, Panchkula posted in Market Committee, Taraori and after taking into consideration the documents produced on record regarding salary of the deceased, the income of the deceased was held to be Rs.43,000/- per month. Keeping in view the future prospects and age of the deceased as 50 years, 30% increase in his annual income was added towards the future prospects and his salary was taken as Rs.55,900/- per month (43,000+12,900). Keeping in view the number of dependants, the deduction of $\frac{1}{3}^{\text{rd}}$ of the total income of the deceased was made and the net income of the deceased for assessing compensation was taken as Rs.37,267/- (55900-18633). Considering the age of the deceased as 50 years, multiplier of 13 was applied and dependency was worked out as Rs.58,13,632/- (37267 X 12 X13).

In view of Rule 5 (1) (c) of the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006, the claimant being dependant of the deceased would get financial assistance upto 7 years and would get a total financial assistance of Rs.36,12,000/- (43000 X 12 X 7). After deducting this amount from the amount of the total dependency i.e. Rs.58,13,682/-, net dependency of the claimant Anita being widow of deceased Surender Kumar for assessing compensation was taken as Rs.22,01,631 (5813632-3612000).

Besides that, a sum of Rs.50,000/- was awarded towards head of transportation and funeral expenses. Rs.1 lakh were award as consortium to the claimant being widow of the deceased. Under the head of loss of love and affection, Rs.1 lakh were awarded and the total compensation of Rs.24,51,631/- was awarded by the Tribunal on account of the death of Surender Kumar in the accident.

13. The Hon'ble Apex Court in **Reliance General Insurance Company Ltd. Vs. Shashi Sharma, 2016 (4) RCR (Civil) 569** has examined the issue with regard to calculation of compensation after adjusting the payment to the dependants of the deceased government employees under the Haryana Compassionate Assistance to the Dependants of the Deceased Government Employees Rules, 2006 and has held that in case of death of government employee in a motor vehicle accident, insurance company is entitled to deduct amount receivable by the dependants of the deceased Government Employee towards pay and wages of the deceased employee.

14. Thus, it has been clearly laid down by the Hon'ble Apex Court that the Insurance Company is liable to deduct amount receivable by the dependants of the deceased government employee in terms of Rule 5 (1) of the 2006 Rules, towards financial assistance, equivalent to the loss of wages of the deceased employee for the period specified and the measure of compensation must be just and adequate and double benefit should not be passed on to the claimants in the matter of award of compensation. So in the present case, the Tribunal has rightly deducted the said amount keeping in view the ratio of law laid down in the case of **Shashi Sharma (supra)**.

15. But the contention that has been raised on behalf of the appellant/Insurance Company is that the Tribunal has wrongly added 30% of future prospects considering the age of the deceased as 50 years, when no birth certificate regarding proof of age of the deceased has been produced on record by the claimants. I do not find any substance in the said contention raised by learned counsel for the appellant. A perusal of the post mortem report Ex.P3 on record reveals that therein the age of the deceased, Surender Kumar has been mentioned as 50 years. In the claim petition also the age of the deceased Surender Kumar has been mentioned as 50 years. Widow of the deceased Surender Kumar when stepped into the witness box as PW1 has again stated that the deceased was 50 years old at the time of his death in the accident. Tribunal has rightly observed that the respondents have not objected to the age of the deceased at any stage of the proceedings. Infact no rebuttal evidence has been produced on record by the respondents to substantiate their this contention that he was 54 years old. Just bare oral statement of RW1 Sanjeet Kumar, AR, Marketing Committee, Taraori does not prove that the deceased was to reach at the age of superannuation on 30.04.2018. No documentary evidence has been produced by this witness in order to prove that when Surender Kumar was going to retire. Rather he has very candidly admitted in his cross-examination that he had not brought any salary record of the deceased and had just brought the recording regarding financial assistance which was being given to the widow of the deceased- Surender Kumar. In his testimony, there is no whisper about age of the deceased being 54 years as alleged now by the appellant. Thus, keeping in view the age as mentioned in the post mortem report and other material on

record, the Tribunal has rightly considered the age of the deceased as 50 years at the time of accident. Once it is proved that the deceased was 50 years old at the time of his death in the accident then this contention of counsel for the appellant pales into insignificance that the future prospects have been wrongly added @ 30% by considering the age of the deceased as 50 years instead of 54 years.

16. It has been laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009** that where the deceased is in permanent job, the addition of 30% of actual salary to the income of the deceased towards future prospects is to be made, if the age of the deceased was between 40-50 years. So as per the ratio of law laid down by the Hon'ble Apex Court in the case supra, the Tribunal has rightly added 30% increase in his annual income towards future prospects.

17. This fact has also not been disputed by the counsel for the appellant that the deceased was working as a tractor driver in Haryana State Agriculture Marketing Board, Panchkula at the time of his death and was posted at Marketing Board, Taraori, District Karnal and was earning a salary of Rs.43,000/- per month. Claimant-Anita, while stepping in to the witness box as PW1 has also reiterated the aforesaid stand taken in the petition regarding profession and income of the deceased, which is further corroborated from the testimony of PW2, Shiv Dass, Auction Recorder, Marketing Committee, Taraori and who has proved on record the salary certificate of the deceased as Ex.P1. From the perusal of the salary certificate at Ex.P1, it transpires that the gross salary of the deceased for the

month of February, 2014 was Rs.43,000/-. Thus, the income of the deceased has been rightly taken by the Tribunal as Rs.43,000/- per month.

18. As observed above, as age of the deceased was 50 years at the time of the accident, so 30% increase in his annual income towards the future prospects has been rightly added by the Tribunal which comes to Rs.55900/- (43,000+12900). As children of the deceased were already married, so the claimant-Anita, widow of the deceased has been rightly taken as dependant upon the deceased and as per the law laid down in the case of **Sarla Verma (supra)**, the deduction of 1/3rd of income has been rightly made by the Tribunal on account of personal expenses of the deceased and after deducting 1/3rd of the total income of the deceased, the income comes to Rs.37267/- (55900-18633) per month.

19. As deceased was 50 years old at the time of his death in the accident so keeping in view the ratio laid down in the case of **Pranay Sethi (supra)**, multiplier of 13 has been rightly applied by the Tribunal in the present case and by applying the multiplier of 13, the dependency has been rightly worked out Rs.58,13,632/- (37267 x 12 x 13).

20. Admittedly, Anita widow of deceased Surender Kumar is getting the financial assistance of Rs.43,000/- per month from the department in view of Rule 5 (1) (c) of the Act . The claimant being dependant of the deceased would get financial assistance as per Rule 5 (1) (c) upto 7 years and would thus get a total financial assistance of Rs.36,12,000/- (43000 X 12 X 7). So keeping in view the ratio of law laid down in the case of **Shashi Sharma (supra)**, this amount has been rightly deducted by the Tribunal and after deduction of this amount from the

amount of total dependency i.e. Rs.58,13,632, net dependency of the claimant Anita being widow of the deceased Surender Kumar comes out to be Rs.22,01,631/- (5813632-3612000).

21. The Tribunal has also granted the claimant a sum of Rs.50,000/- towards transportation and funeral expenses and Rs.1 lakh for loss of consortium to the claimant being widow of deceased and conventional sum of Rs.1 lakh for loss of love and affection. But in view of the ratio of law laid down in the case of **Pranay Sethi (supra)**, claimant is entitled to get compensation under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. As such the amount of compensation granted by the Tribunal under the above said heads is not in consonance with the ratio of law laid down in the case of **Pranay Sethi (supra)**. So the funeral expenses are decreased to Rs.15,000/-. Loss of consortium is also reduced from Rs.1 lakh to Rs.40,000/- and Rs.15,000/- are granted for loss of estate.

22. The amount of interest that has been granted @ 9% per annum also appears to be on the higher side. As such, the same is reduced to 7.5% per annum/. The compensation that is to be granted to the claimant is re-worked as under:

1.	Monthly income of the deceased	₹ 43,000/-
2.	Increase in future prospects	₹ 55,900/- (43000+12900)
3.	1/3 rd Deduction for personal expenses	₹ 37,267/- (55900-18633)
4.	Multiplier	13
5.	Annual dependency	₹ 58,13,632/- (37267X12X13)

6.	Net dependency after deducting the financial assistance which is to be received by the widow upto 7 years.	₹22,01,631/- (5813632-3612000)
7.	Loss of Estate	₹15,000/-
8.	Funeral expenses	₹15,000/-
9.	Loss of consortium	₹40,000/-
	Total	₹22,71,631/-

23. Thus, the respondent/claimant in the appeal is held entitled to compensation of Rs.22,71,631/- along with interest @ 7.5% per annum from the date of filing of the claim petition till the realization. Accordingly, the instant appeal i.e. FAO-5355-2017 is partly allowed.

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

(SUKHVINDER KAUR)
JUDGE

26.04.2023

harjeet

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