

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

FAO-6496-2017(O&M)

Reserved on:-3.5.2023

Date of Pronouncement:-10.5.2023

Tata AIG Insurance Company Ltd.

...Appellant

Versus

Smt.Seema and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajneesh Malhotra, Advocate and
Mr.Yagyashree, Advocate
for the appellant.

Mr.D.P.S. Bajwa, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of death of one Vijay alias Vijender aged about 35 years in a motor vehicular accident, which took place on 15.3.2015 at about 7:30 p.m. in the area of village Sainthli near Nain Dairy Farm within the jurisdiction of Police Station Sadar, Narwana statedly on account of rash and negligent driving of TATA Ace bearing registration No.HR-39C/7467 (hereinafter referred to as the offending vehicle) by respondent No.1 Sandeep, legal representatives of such deceased, namely, his widow - Seema, aged 32 years, minor daughter - Manisha, aged about 17 years, minor son – Manish, aged about 13 years and minor daughter – Sindar aged about 12 years, all residents of village Sainthali, Tehsil Narwana, District Jind had brought a claim petition under Section 166 of the Motor Vehicles Act,

1988 (hereinafter referred to as the Act) against respondents i.e. Sandeep – driver-cum-owner and Tata AIG Insurance company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.40 lakhs.

2. As per the case of the petitioners/claimants, deceased Vijay @ Vijender was running a Tea stall under the name and style of Vijender Tea Stall at Anaj Mandi, Surewala, earning Rs.15,000/- per month and on account of his death, the claimants have lost their earning member.

3. After contest, the claim petition was allowed by Motor Accident Claims Tribunal, Jind (hereinafter referred to as the Tribunal) vide award dated 25.5.2017 granting compensation of Rs.12,55,000/- to the claimants along with interest @ 7.5% per annum from the date of filing of the petition till realization, payable by all the three respondents jointly and severally. The manner in which the compensation amount is to be apportioned is also given in the award.

4. Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

5. Notice of the appeal was issued to the respondents. Respondents No.1 to 4 have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. Learned counsel for the appellant insurance company has vehemently argued that the Tata Ace vehicle in question was not involved in the accident and it was planted later on, which is evident from the fact that in the FIR got registered with regard to the accident neither

the registration number of the offending vehicle is mentioned nor the name of its driver is given and furthermore the evidence adduced by the claimants in the form of PW2 Shakti Singh, who provided the eye-witness account of the accident is not convincing because he being the real brother of the deceased had got every reason to come forward to depose falsely in favour of the petitioners/claimants and against the respondents and his presence at the spot does not come out to be natural and probable.

8. On the other hand, learned counsel for the respondents/claimants has vehemently contested these contentions.

9. After hearing the rival contentions, I find that the involvement of Tata Ace in question in the accident and respondent No.2 Sandeep having caused the mishap by rash and negligent driving of Tata Ace stands established on the record. Non-mentioning of registration of the Tata Ace in the FIR as well as name of respondent No.1 Sandeep being not there as its driver does not make much difference the FIR is not an encyclopedia of the incident and it need not contain the details of the incident/accident including the manner it took place; the vehicle which caused the accident; the person, who was driving such vehicle etc. It is a matter of investigation. The police after lodging the FIR carries out investigation in the case so as to find out as to how the crime was committed and the persons responsible for committing the same.

10. Furthermore, it has come on record in the form of statement of PW3 Ram Roop, Ahlmad, who had brought the summoned record of case titled 'State Versus Sandeep', FIR No.60 dated 16.3.2015, under Sections 279/304-A IPC, Police Station Sadar, Narwana and had stated

that Sandeep was granted bail on 23.3.2015 and vehicle No.HR-39C/7467 was released on superdari on 30.3.2015. charge was framed against the accused on 10.6.2015 and case was fixed for prosecution evidence for 29.10.2015 and two witnesses, namely, Shakti and Ramesh were examined till date. PW4 HC Pawan Kumar, who had carried out the investigation in the criminal case registered against the respondent No.1 Sandeep with regard to the accident had stated that on 16.3.2015, he had recorded statement of one Shakti upon which he had sent written information through HC Jagpal to police station for registration of FIR and FIR was recorded by ASI Suresh Kumar. He further stated that on the same day, he had conducted proceedings under Section 174 Cr.P.C., preparing site plan on the demarcation of complainant Shakti, getting the damaged vehicles photographed also. He stated that on 23.3.2015, he had arrested accused Sandeep, who was produced by Baljit and had taken into custody the Tata Ace vehicle No.HR-39C/7467 along with its RC and DL and further Constable Subhash Chander had examined damaged motorcycle and offending vehicle on 26.3.2015 in his presence. He further stated that challan in the case had been filed in the Court by SHO Mandeep Kumar.

11. As against that evidence, respondent No.1 Sandeep did not step into the witness-box to deny that he was at fault in happening of the mishap and that he was driving the Tata Ace vehicle in question in rash and negligent manner. Therefore, the evidence adduced by the claimants has gone un rebutted.

12. The contentions raised by learned counsel for the appellant

insurance company that the offending vehicle has been planted in this case and respondent – Sandeep had not caused the accident by rash and negligent driving of that vehicle are not found to be worthy of acceptance.

13. With regard to the quantum of compensation, learned counsel for the appellant – insurance company had assailed the impugned award on that point also contending that the Tribunal fell in error in taking the monthly income of the deceased to be Rs.8,000/- when the minimum wages prevalent in the State of Haryana at the relevant time for a semi skilled worker upper were Rs.5942.75 and semi skilled worker lower Rs.6072.75. He argued that the Tribunal should have assessed the income of the deceased in view of the minimum wages prevalent in the State at the relevant time.

14. Whereas, this contention is strongly rebutted by learned counsel for the respondents/claimants No.1 to 4.

15. I on my part feel that the Tribunal on the basis of evidence available had taken the age of deceased to be between 36 to 40 years and his monthly income as Rs.8,000/- Such monthly income can certainly be not termed to be on higher side.

16. As per the version of the claimants, the deceased was running a Tea stall and earning Rs.15,000/- per month. A person earning Rs.8,000/- by running a Tea stall, his such income assessed can certainly be not termed to be excessive. Minimum wages of workers prevalent in the State at the relevant time provide some help and assistance in assessing income of the persons whose avocation and income are not proved on record by the party concerned by leading enough cogent and

convincing evidence, but those figures are not the final word and binding upon the Tribunal/Court. Therefore, it cannot be said that in all cases the minimum wages prevalent in the State at the relevant time are to be taken into consideration for assessing the income of the deceased ignoring the evidence available on record with regard to his avocation and income. Therefore, this submission made by learned counsel for the appellant insurance company is also rejected. The Tribunal has not made any addition towards the future prospects.

17. In terms of judgment *National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*, when the deceased was self employed and below the age of 40 years, 40% of the amount was required to be added as future prospects. Doing that the monthly income of the deceased comes out to be Rs.11200 (8000 + 3200).

18. Keeping in view the number of family members of the deceased, 1/4th amount is to be made to the income of the deceased as personal expenses. Doing that, the monthly dependency of the claimant comes out to be Rs.8400/-(11200 - 2800) and annual dependency comes out to be Rs. 8400 x 12 = Rs.1,00,800/-.

19. The Tribunal has used multiplier of 15, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 100800 x 15 = 15,12,000/-.

20. Under the conventional heads, the Tribunal has awarded Rs.50,000/- under the head loss of love and affection, Rs.25,000/- as funeral charges and Rs.1 lakh to petitioner No.1 on account of loss of consortium.

21. However, as per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate. Doing that the total compensation comes out to be Rs.15,82,000/- (15,12,000+40000+15,000+15,000).

22. The Tribunal has awarded a sum of Rs.12,55,000/-. There is no scope for reduction of the compensation awarded. I find the compensation awarded to be just and fair considering the settled legal position on the subject. It cannot be said to be on higher side. However since the claimants have not filed any cross appeal or cross-objections, amount is not being enhanced.

23. The findings recorded by the Tribunal are well reasoned and cannot be said to be arbitrary or erroneous contrary to the evidence available on record. Therefore, there is no ground to set aside the award.

24. Finding no merit in the appeal, the same stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

10.5.2023
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No