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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7235-2017(O&M) and XOBJC-38-CII-2018 (O&M)
Date of decision: January 12, 2023

The New India Assurance Company Limited

….Appellant

versus

Mohinder Kaur and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vinod Gupta, Advocate,
For the appellant.

Mr. Jimmy Singla, Advocate,
For respondents No.1 to 3.

Mr. Surinder Gandhi, Advocate,
For respondent No.5.

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ARUN MONGA, J. (ORAL)

Appellant before this Court is the Insurance Company seeking to set aside the impugned Award dated 14.07.2017 passed by learned Motor Accidents Claims Tribunal, Fatehgarh Sahib.

2. Succinct facts as noted by the Tribunal are as below:

"*2. Allegedly on 02.09.2015, Harbans Singh had accompanied Kuldeep Singh son of Pritam Singh, the Sarpanch of the village Thablan, to the Tehsil Complex, Khamano for some documentary work. While on their way back, Harbans Singh was riding a motor cycle No.PB-23L-5480 while Kuldeep Singh was trailing behind in his Innova Car No. PB-11AX-7022. When they crossed Gurudwara Sahib of village Ranwa, a Bus bearing registration No.PB-10ES-8016 came speeding from behind. It was precisely 2:45 PM. In a rash and negligent manner the driver of the Bus, after overtaking the Innova Car, struck against the motor cycle from his back side. As a result of the collusion, Harbans Singh fell on the road and received multiple injuries which proved fatal. Kuldeep Singh stopped his Innova Car and rushed to the aid of Harbans Singh. Respondent No.1, the driver of the offending Bus stopped his vehicle and arrived at the scene.*

On seeing the huge public gathered at the spot he managed to flee leaving the Bus at the scene of the occurrence.

3. Harbans Singh succumbed to injuries at the spot. Post Mortem of Harbans Singh was got conducted. FIR No. 120 of 2.9.2015 was registered at Police Station Khamanon. Allegedly, Harbans Singh was employed as a caretaker in the house of one Amrit Singh at Kharar and was drawing salary of Rs.15,000/- per month. Apart from that Harbans Singh was a dairy farmer. It was alleged from all these sources, the said Harbans Singh aged around 65 years at the time of his death was earning Rs.30,000/- per month. The claimants, being the unfortunate heirs/dependents upon the deceased, on account of the untimely death of the deceased, have been left in lurch. They have filed a claim of Rs.50,00,000/- as compensation."

3. Upon notice, respondent-Gurmeet Singh, driver has resisted the claim petition on the ground that the Bus was not involved in the accident in question. The Bus was duly insured with appellant vide a valid insurance policy for the period from 23.03.2015 to 22.03.2016. The respondent possessed valid driving licence issued by the DTO, Barnala on 07.03.2008 valid upto 23.03.2017 authorizing him to drive heavy transport vehicle. Respondent-Jujhar Transport Company, being the registered owner of the bus, while denying the claim admitted the fact that respondent-Gurmeet Singh was the driver of the vehicle at the relevant time. However, it was denied that the vehicle was involved in the accident.

4. Appellant-Insurance Company took the preliminary objections that the vehicle in question, which was duly insured under a valid insurance policy, has been falsely implicated in this case. Even if the accident is proved to have occurred, it was on account of the sole negligence on the part of the driver of the Motor Cycle. It was further pleaded that no liability could be technically fastened on the insurance company since the driver did not possess a valid and effective driving licence. It was further pleaded that the mandatory requirement of Section 134 (C) of the Motor Vehicles Act were

not complied with and so were the provisions of Section 158 (6) of the Act. All the averments made in the claim were denied.

5. Learned Tribunal framed the following issues:

> "*1) Whether Harbans Singh died in a motor vehicular accident occurred on 02.09.2015 caused by respondent No.1 while driving the bus bearing registration No. PB-10ES-8016 driven in a rash and negligent manner as alleged? OPP*
> *2. Whether claimants are entitled to compensation and to what extent and from whom? OPP*
> *3. Whether driver of offending vehicle was not holding valid and effective driving licence, RC and route permit at the time of accident? OPR3*
> *4. Relief."*

6. On appraisal of record/ evidence, learned Tribunal decided IssuesNo.1 and 2 in favour of claimants and Issue No.3 was decided against the appellant and in favour of the respondents-driver and owner of the offending vehicle. Consequently, compensation of Rs.12,75,000/- was awarded in favour of the claimants.

7. It has been contended by the learned counsel for the appellant-Insurance Company that the deceased was 70-year old and the claim petition was filed by his widow and two major sons, who were not dependent upon him. Besides the income was taken Rs.20,000/- per month solely on the basis of statements of one CW-1 Lakhvir Singh claimant No.2 and CW-3 Amritpal Singh, employer of the deceased, who was allegedly looking after his house against aforementioned monthly payment.

8. Learned counsel for the appellant-Insurance Company further contends that since the two major sons of the deceased were not dependent on the deceased, therefore, the deduction of personal expenses was to be made @ 50% instead of 1/3rd. Accordingly dependency was to be worked out at

1/2;Secondly, the income taken into account by the learned Tribunal was on the higher side and at best the income which could have been taken into account was the minimum wages payable during the relevant period of time i.e., Rs.7600/- per month. Learned counsel further states that a sum of Rs.1,35,000/- has been awarded under Conventional Heads contrary to the latest pronouncement of the Constitution Bench of the Supreme Court.

9. On the other hand, learned counsel for respondents No.1 to 3/claimants/cross-objectors contends that learned Tribunal below did not grant consortium to the family members of the deceased as per the Apex Court Judgment rendered in "**Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others"**, reported in **2019 (3) SCC (Cri) 153.** He further submits that cross-objections have also been filed and it was amply clear from the postmortem report that deceased was 56 years of age at the time of accident. The Tribunal, while awarding the compensation, assessed the age of the deceased as 70 years and applied the multiplier of 5 in this case. The age cannot be determined on fake documents procured by the insurance company. Therefore, multiplier has to be modified and increased accordingly. He further submits that compensation awarded under different heads are also inadequate.

10. Having heard the competing arguments of learned counsel for the parties, I am not inclined to interfere with the findings rendered by the Tribunal believing the testimony of CW-3 Amritpal Singh that the deceased was looking after his properties for which he was being paid Rs.15,000/- per month as a salary. Merely on the ground that in the income tax return filed by CW-3 Amritpal Singh, he had not mentioned the deceased as one of his

employees and the salary disbursed to him. The said omission of not mentioning the name or salary is neither fatal to the testimony nor even otherwise, an employer is required under Income Tax Law to mention the names of the employees and respective salaries being paid to them as there is no specific column in the income tax return forms. To that extent, an assessee is only required to give the details of his expenditures vis-à-vis the income for being assessed under the Income Tax Act. Death of Harbans Singh would naturally result in loss of his contribution to the work of rearing milk cattle and income from sale of milk. In my opinion, the Tribunal rightly assessed his total monthly income @ Rs.20,000/-.

10.1 Likewise, deduction towards personal and living expenses seems correctly taken as 1/3rd. The Tribunal also rightly assessed the age of the deceased as 70 years at the time of accident, given the overwhelming evidence placed on record by the appellant-insurance company in the form of copy of Voter Card (Ex.RX) issued by the Election Commission of India which records date of birth of deceased as 09.11.1945.

10.2 As regards the future prospects, learned counsel for the appellant-Insurance Company is correct in pointing out that being 70-year old, deceased was not entitled to any future prospects. Confronted with the same, learned counsel for the claimants fairly concedes that to that extent the Award passed by the Tribunal ought to be modified.

10.3 In the premise, the revised computation in terms of the Apex Court's judgment rendered in the cases of **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**, is as below:

Deceased	Harbans Singh
Date of accident/death	02.09.2015
Age	70 years
Marital Status	Married
Income of the deceased	Rs.20,000/- per month
Future prospects	Nil
Annual Income	Rs.2,40,000/- annual income (Rs.20,000 x12)
Deduction in dependency	1/3rd (2,40,000-80,000=1,60,000/-)
Multiplier	5
Loss of dependency	Rs.1,60,000 x 5 = Rs.8,00,000/-
Conventional Heads(funeral expenses and loss of estate, love and affection	Rs.1,35,000/- (25,000+10,000+1,00,000)
Total	Rs.8,00,000+1,35,000=9,35,000/-
Loss of consortium (claimant No.1 being widow of the deceased)	1,00,000/-
Compensation awarded by the Tribunal	Rs.11,75,000/- +1,00,000/- = Rs.12,75,000/-
Amount of compensation to be recovered from the claimants/cross-objectors	Rs. 12,75,000-Rs,10,35,000 =2,40,000/-

11. Accordingly, the impugned award is modified in terms of the above computations. Excess amount of compensation of Rs.2,40,000/- shall be deducted from the amount of Rs.12, 75,000/- awarded by the Tribunal.

While issuing notice of motion vide order dated 03.11.2017, stay of disbursal of 50% of the awarded amount was ordered. The above excess amount of Rs.2,40,000/- shall be adjusted/recovered accordingly.

12. Appeal filed by the Insurance Company is partly allowed in above terms, while cross objections filed by the claimants are dismissed.

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

(ARUN MONGA)
JUDGE

January 12, 2023
Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No