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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8174-2017 (O&M) WITH
XOBJC-236-CII-2018
Date of decision: March 14, 2023

United India Insurance Co. Ltd.

….Appellant

versus

Aarti Rani and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Harsh Aggarwal, Advocate
for appellant-Insurance Company.

Mr. Dheeraj Narula, Advocate
for respondents No.1 to 4-Cross-Objectors.

Service of respondent No.5 dispensed with
vide order dated 12.01.2018.

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ARUN MONGA, J. (ORAL)

Appellate before this Court is Insurance Company seeking to set aside impugned award dated 02.08.2017rendered by learnedMotor Accidents Claims Tribunal, Sirsa (for brevity, "Tribunal"). Respondents No.1 to 4/claimants have filed cross-objections praying to enhance the compensation amount of Rs.17,40,000/-, as awarded by learned Tribunal.

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. *In brief, the facts of the present case are that on 14.11.2014 at about 8.00 p.m. Surender Kumar son of Nathu Ram, alongwith his nephew Sunny (since deceased) had gone to Rania Chungi, Sirsa for purchasing of house hold articles after 15-20 minutes when they purchased the goods, in the meanwhile truck bearing reg. No. HR38A/5168 stopped there, where Truck driver was quarreling with some other person. Surender Kumar and Sunny (deceased) also reached there and they were standing at a distance of 20-25 feet from the truck. After some time the driver of the truck while driving the truck at a high speed rashly and negligently towards Rania road, hit the same into Sunny, as a result of which he fell down on the road and truck passed over his body. The Truck driver fled away from the place of occurrence after causing the accident towards Rania side. After*

arranging some vehicle, Sunny was taken to G.H. Sirsa but on the way he succumbed to the injuries.
3.A criminal case was registered on the statement of Surender Kumar under FIR No. 1116 dated 14.11.2014 under Section 279,304-A of IPC against the respondents no.1. Police investigated the matter and on the basis of CCTV footage police prepared CD and police found respondent no.1 being driver and owner to be guilty under section 304/34 IPC and police filed challan under section 304/34 IPC before the learned Ilaqa Magistrate and case was committed to learned Sessions Judge,Sirsa where trial is pending."

3. Upon notice, respondent No.5 herein (driver and owner of offending vehicle)filed written statement raisingpreliminary objections regarding maintainability, connivance with police etc.

3.1. On merits, it was denied that alleged accident ever took place with truck bearing reg. No.HR38-A/5168. It was averred that answering respondent had been falsely involved in the alleged accident and a false criminal case bearing FIR No.1116 dated 14.11.2014, under Section 279/304-A IPC P.S City Sirsa was registered against him by local police in connivance with claimants. Further it was averred that respondent-driver was having a valid and effective driving license on the date of alleged accident and said truck was duly insured with the United Insurance Company Limited (appellant herein). Also it was averred that answering respondent was not liable to pay any compensation to the petitioners nor they were entitled to get any compensation from the answering respondent. In case, petitioners are to be held entitled to compensation, then in that eventuality responsibility was prayed to be fastened on Insurance Company. Insurance Company was liable to indemnify claim because vehicle in question was duly insured. Other averments were controverted praying for dismissal of petition.

3.2 Appellant-Insurance Company filed its written statement taking preliminary objections *inter alia*that driver of offending vehicle was not holding a valid and effective driving licence at the time of accident. Respondent No.5

hereinviolated terms and condition of Insurance Policy and petitioners had falsely got involved the truck in the alleged accident.

3.3. On merits, it was pleaded that amount claimed was highly exaggerated. Other averments were denied. Prayer for dismissal of petition was made.

4. Learned Tribunal framed the following issues:

> "*1. Whether Sunny son of Rajinder Kumar died as an unnatural death as a result of use of a Truck No. HR-38-A/5168 being driven by respondent no.1 in a rash and negligent manner? If so, its effect?OPP.*
> *2. If issue No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom?OPP.*
> *3. Whether the petition is not maintainable in the present form?OPR.*
> *4. Whether the respondents have no cause of action or locus standi to file the present petition? OPR*
> *5. Whether the petitioners have concealed the true and material facts from the court? OPR*
> *6. Whether the respondent no.1 was not having valid driving licence at the time of accident? OPR*
> *7. Whether the insured has violated the terms and condition of the insurance policy in question?OPR No.1.*
> *8. Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decidedissues No.1 & 2 in favour of claimants. Issues No.3 to 5 were decided against respondent No.5 (driver-cum-owner) and appellant Insurance Company. Issues No.6 & 7 were decided against appellant. Consequently, claimants were held entitled to compensation of Rs.17,40,000/- and respondent-driver-cum-owner and appellant Insurance Company were held liable to pay the same jointly and severally with interest @ 9% per annum from the date of filing of petition till realization.

6. Particularly, there are two aspects of the matter that need to be adjudicated in the present appeal:

(i) Argument of learned counsel for appellant-Insurance Company that it was a case of murder of deceased by pushing him under the offending vehicle and not a result of rash and negligent driving of driver of offending truck;

(ii) The stand of learned counsel for respondents No.1 to 4 as taken in cross-objection, i.e.,XOBJC-236-CII-2018 that income of the deceased was assessed wrongly by not giving him benefit of his running kiosk/ plying *rehri* (hand trolley) in evening by selling boiled eggs and making omelettes every evening after finishing his work for which he was earning even more than the salary he was getting from where he was working.

7. Before adverting to cross-objections, let us first see if there is any substance in the arguments of learned counsel for appellant-Insurance Company that due to variation in testimony of eyewitness Surinder Kumar, learned Tribunal ought not to have fixed liability of Insurance Company as there was no negligence on the part of driver of offending vehicle. He would contend that Insurance Company should have been absolved in view of contradictory testimony given by eyewitness in criminal proceedings, wherein, he stated that one Jagseer Singh was seen by him at the time of pushing deceased before the moving truck at the time of accident and therefore, he would argue that being so, it is a clear case of murder and Insurance Company is not liable to pay compensation.

7.1 Argument of learned counsel for appellant-Insurance Company is fraught with inherent fallacy, as is borne out from the FIR itself, which was originally registered under Section 279 read with Section 304-A of Indian Penal Code, 1860 (for short 'IPC'). In fact, there was not even invocation of either Section 302 or even 304 IPC. It is subsequently that at the time of framing of charges, Section 304 IPC was invoked, but on conclusion of trial and after appreciation of evidence, criminal Court of competent jurisdiction was of the opinion that it is a case of simplicitor rash and negligent driving of offending vehicle and driver was convicted under Section 279 read with Section 304-A IPC.

7.2 There is another aspect of the matter. Learned counsel for appellant seems to be taking advantage of variation of testimony, if any, which in any case was for the criminal Court to adjudicate upon. But the *innuendo*of argument seems to suggest that motive of committing murder was either deceased having planned his own death to take benefit of Insurance Policy or there was some enmity between deceased and the one who allegedly pushed him before the truck as per eyewitness statement. Both the motives, to say the least, are highly unbelievable in the facts of present case. In case, motive was enmity, one who pushed deceased was never made an accused in the FIR nor was any action taken against him by any of family members of deceased or by the State. As regards other motive of the deceased to plan his death so that his heirs could claim benefit of Insurance Policy that too is preposterous, unpalatable and unworthy to even remotely think that someone who planned his own death in such a manner especially when there is no evidence and to think so merely on the basis of conjectures and surmises would be travesty of justice.

8. Coming now to the second aspect of the income of the deceased. In my opinion, the learned Tribunal has held that assessed his income was Rs.6,599/- per month from salary. However, I am of the view that it fell in manifest error in not appreciating the evidence on record though it was merely oral in nature being testimony of mother of deceased, who stated in examination-in-chief that deceased used to sell boiled eggs and omelette in evening and was earning Rs.10,000/- per month. In cross-examination, she stood by her version and her testimony remained unimpeached and to counter her evidence, there was no rebuttal by Insurance Company by not making any enquiry by going to the place of occurrence and making enquiry whether deceased used to park his *rehri* and run a kiosk at Balmiki Chowk, Sirsa. In normal course, it was expected of the Insurance Company to have

some preliminary enquiry given that it is equipped with its own team of especially hired investigators. In fact, in cross-examination of testimony of mother of deceased, only question put to her was that it was wrong to suggest that her son was earning anything during evening hours and no further questions were asked. Being so, I am of the view that testimony of mother of deceased remained un-impeached and benefit thereof ought to have been given to claimants. Since, there is nothing specific on record as to how much was his earnings but by reasonable guesstimate from sale of boiled eggs and omelette every evening, he should fetch atleast an income of Rs.3,000/- per month. Accordingly, same is added as monthly income of deceased.

9. Learned counsel for appellant-Insurance Company would also argue that learned Tribunal amount awarded on account of transportation and funeral expenses, love and affection and on account of consortium is on higher side.

9.1. In the parting I may hasten to add that in course of arguments, there is feeble attemptmade by learned counsel for appellant-Insurance Company that future prospects ought to be 40% instead of 50%. There is no substance in the same as deceased then aged 27 years was working in the IDBI Bank which is a Government of India entity and therefore, learned Tribunal rightly determined future prospects as 50%.

10. Having heard rival contentions and on perusal of impugned award, I find that the submissions made before learned Tribunal were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

11. In the premise, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **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 compensation for the death of Sunny deserves enhancement.

12.1 In view of the above discussion, various computations of compensation *qua* each head are modified as below:

Deceased	Sunny
Date of accident/death	14.11.2014
Age	27 years
Marital Status	Married
Claimants	Wife, minor son, minor daughter and mother
Income of the deceased	Rs.6,599/-
Other income (by selling boiled eggs and omelette)	Rs.3,000/-
Total income of deceased	Rs.9,600/- p.m. (rounded off)
Future prospects	50% (Rs.9,600+4,800) = Rs.14,400/-
Deduction in dependency for personal expenses	1/4th (14,400-3,600)=Rs.10,800/-
Annual dependency	Rs.1,29,600/- (10,800 x 12)
Total loss of dependency with Multiplier of 17	Rs.22,03,200/-
Loss of Consortium	Rs.44,000/- x 4 = Rs.1,76,000
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total	Rs.24,12,200/- (22,03,200 + 2,09,000/-
Compensation awarded by the Tribunal	Rs.17,40,000/-
Enhanced amount of compensation to be paid	Rs.6,72,200/- (Rs.24,12,200-Rs.17,40,000/-)

13. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interestas awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional penal interest of 3% p.a. shall be paid from the date

of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in terms of the apportionment, as already determined by learned Tribunal.

15. **FAO-8174-2017** filed by Insurance Company stands dismissed and **XOBJC-236-CII-2018** filed by respondents No.1 to 4-cross objectors (claimants) is disposed of in above terms.

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

**(ARUN MONGA)
JUDGE**

March 14, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No