IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-6581-2018(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Smt.Manju Devi and others

...Respondents

(2) FAO-6892-2018(O&M)

Smt.Manju Devi and others

...Appellants

Versus

Ajay Singh and others

...Respondents

Date of Decision:-6.2.2023

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

Present: Mr.Ashwani Talwar, Advocate
for the appellant in FAO-6581-2018 and
for respondent No.3 in FAO-6892-2018.

None for the appellants in
FAO-6892-2018 and none for respondents No.1 to 5 and 7 in
FAO-6581-2018.

Ms.Jaspreet Kaur, Advocate
for respondent No.6 in FAO-6581-2018 and
for respondent No.1 in FAO-6892-2018

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H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. **FAO-6581-**

2018 filed on behalf of insurance company and **FAO-6892-2018** filed on behalf of the claimants, which have arisen out of the same award.

2. Briefly stated, the facts of the case are that petitioners/claimants Manju Devi aged about 34 years – wife, Alok aged about 16 years and Abhyam Yadav aged about 12 years – minor sons, Bhagwan Singh aged 65 years – father and Smt.Bhateri aged 70 years – mother of Rajbir Singh, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the Tribunal) against respondents i.e. Ajay Singh – driver, Ajit – owner and United India Insurance Company Ltd. - insurer of car bearing registration No.HR-61A-9202 (hereinafter referred to as the offending car), claiming compensation.

3. As per the case of the claimants, on 8.11.2016 Rajbir along with Jitender son of Devi Dutt, residents of village Roop Garh were returning home from their fields; at about 6:30 p.m., when they had reached on the road, in the meanwhile the offending car came from the side of village Nimri being driven by respondent No.1 Ajay Singh in a rash and negligent manner and had hit Rajbir from behind; resultantly Rajbir fell down and suffered multiple injuries; after the accident, respondent No.1 Ajay Singh sped away the offending car, however Jitender, who was accompanying Rajbir had noted down the registration number of the offending car with the help of a torch; Jitender had taken Rajbir injured to hospital and informed his family regarding the accident;

the family members of Rajbir reached the hospital and shifted him to General Hospital, Bhiwani for treatment but was he was declared as brought dead.

The matter was reported to the police and formal FIR No.737 dated 8.11.2016 for the offences under Sections 279 and 304-A IPC was registered with Police Station Sadar, Bhiwani against respondent No.1 Ajay Singh on the basis of statement of Jitender.

4. As per the case of the claimants/petitioners, the deceased was aged about 36 years and was an Ex-Army person; his monthly income was about Rs.40,000/- and he was an income tax payee. The petitioners/claimants prayed for compensation of Rs.1 Crore, payable by all the respondents jointly and severally.

5. On notice, all the three respondents appeared and filed written statements contesting the claim petition.

6. In the written statement filed by respondent No.1, he denied having caused any such accident by his rash and negligent driving of the offending car.

7. Respondent No.2 had also filed a separate written statement denying the entire case of the petitioners, rather stating that the alleged offending car was not in his custody on the date of alleged accident because he had already sold the same to respondent No.1 Ajay Singh through affidavit dated 14.10.2016 attested by Sh.Gyanender Singh Chauhan, Advocate/Notary Public.

8. In the written statement filed on behalf of respondent No.3 – insurance company it has also contested the claim petition further

contending that the offending car was being driven in violation of the terms and conditions of the insurance policy, therefore, such insurance company is absolved of its liability to pay any compensation to the claimants.

9. Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence in support of their respective claims.

10. During the course of evidence of petitioners/claimants, they had had examined PW1 Jitender, who provided eye-witness account of the accident. PW2 Smt.Manju Devi, petitioner/claimant No.1 deposed as per the case of the claimants and PW3 Surender lend corroboration to the case of the claimants.

11. In rebuttal respondent No.3 – insurance company examined Sh.Deepak Kumar, Registration Clerk in the office of RTA, Bhiwani as RW1.

12. After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners/claimants against respondents holding that respondent No.1 was author of the accident by his rash and negligent driving of the offending car; issue No.2 was decided finding the claimants to be entitled to get compensation of Rs.61,45,000/-, payable by all the respondents jointly and severally, whereas issue No.3 was decided against respondent No.3 being not pressed. As a result of findings on all the issues, the Tribunal allowed the claim petition partly and compensation of Rs.61,45,000/- with interest @ 7% per annum from the date of the claim petition till final realization was awarded to the claimants, payable by all

the respondents jointly and severally. The apportionment of compensation amongst the petitioners/claimants as well as the manner and mode of payment are detailed in the impugned award.

13. The claimants/petitioners in the petition being dissatisfied with the quantum of compensation awarded to them and insurance company being also aggrieved by the award have filed separate appeals before this Court.

14. Notices of the appeals were issued to the respective respondents, who put in appearance through counsel.

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

16. Firstly taking up FAO-6581-2018 filed on behalf of the Insurance Company.

17. Learned counsel for the appellant/insurance company has contended that though the deceased is said to have been selected to join Haryana Armed Police, which post carries pay of Rs.21,700/- per month, however, it is to be taken note of that the deceased had in fact not joined the Haryana Armed Police and it is unfair to take his monthly income to be Rs.21,700/- per month.

18. Whereas, learned counsel for the respondents/claimants has contested this contention vehemently saying that the deceased had cleared all the examinations and tests though he was yet to join Haryana Armed Police and if death had not intervened, he would be joined that service, which carries initial pay of Rs.21,700/-, therefore, that figure was rightly taken by the Tribunal as monthly income of the deceased.

19. After hearing the rival contentions and going through the record, I find that the Tribunal was justified in making calculations taking into consideration the fact that the deceased had been selected for joining Haryana Armed Police and in normal routine would have join that service, which carries initial salary of Rs.21,700/-. Keeping in view the fact that the deceased was an Ex-Army Personnel getting pension, his monthly income was rightly taken to be Rs.30,000/- per month.

20. Although learned counsel for the appellant/insurance company has submitted that the deceased was a pensioner from Army getting approximately Rs.13,000/- per month and though he had been selected as Constable in Haryana Armed Police but was not actually appointed, therefore his income could not have been taken to be more than available to a skilled labourer and at the relevant time, the skilled labourer was getting an amount of Rs.10,000/- per month.

21. However, in view of the detailed discussion above, I do not find such submission made by learned counsel for the insurance company to be worthy of acceptance, rather the view taken by the Tribunal seems to be much more plausible and convincing vide which monthly income of the deceased had been taken to be Rs.30,000/- keeping in view the fact that deceased was getting Rs.13,000/- per month as pension being an Ex Army Personnel and basic pay of candidate recorded in Haryana Armed Police is Rs.21,700/- per month. It being so, the criteria to determine the income of a person with help of the schedule specifying the minimum wages payable to different type of workers in the State need not be relied upon in this case.

22. However, the Tribunal fell in error in adding 50% of the income of the deceased towards future prospects, when in terms of the judgment view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** considering the age of the deceased between 35 to 40 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs. 30,000 + 12000 = Rs.42,000/-.

23. In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th Doing that the dependency of claimants comes out to Rs.31,500/- per month(42000 - 10500), annual dependency comes out to Rs. 31,500 x 12 = Rs.3,78,000/-.

24. 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. 3,78,000 x 15 = 56,70,000/-.

25. Under the conventional heads, the Tribunal has awarded a sum of Rs.15,000/- towards funeral expenses, Rs.40,000/- for loss of consortium and Rs.15,000/- for loss of estate.

26. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus***

Pranay Sethi and Ors.(supra), which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

27. Doing that the compensation comes out to be Rs.59,00,000/- (56,70,000+40000+40000+40000+40000+40000+15000+15000).

28. The Tribunal has wrongly awarded compensation of Rs.61,45,000/-. The same is reduced to Rs.59,00,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs. 59,00,000/-. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

29. With such modifications, FAO-6581-2018 filed on behalf of Insurance Company is allowed partly with costs.

30. If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

31. There is absolutely no reason to enhance the amount of compensation rather it has been reduced.

32. Consequently, FAO-6892-2018 filed on behalf of the appellants/claimants stands dismissed with costs.

Since the FAO-6581-2018 filed on behalf of Insurance

Company is allowed partly and FAO-6892-2018 filed on behalf of the appellants/claimants stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

6.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No