2023:PHHC:155421

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) FAO-768-2018 (O&M)

The New India Assurance Company Ltd.

...Appellant

VERSUS

Rita Juneja and others

...Respondents

(ii) FAO-857-2018 (O&M)

The New India Assurance Company Ltd.

...Appellant

VERSUS

Rita Juneja and others

...Respondents

(iii) FAO-1003-2018 (O&M)

Baldev Raj

...Appellant

VERSUS

Rita Juneja and others

...Respondents

(iv) FAO-1108-2018 (O&M)

Baldev Raj

...Appellant

VERSUS

Rita Juneja and others

...Respondents

Date of Decision: December 05, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vinod Gupta, Advocate,
for the appellant-insurance company
(in FAO-768-2018 and FAO-857-2018) and
for respondent-insurance company
(in FAO-1003-2018) and (in FAO-1108-2018).

Ms.Sumedha Kalsy, Advocate
for the appellant (in FAO-1003-2018) and (in FAO-1108-2018).

Mr.Puneet Kakkar, Advocate for the respondents-claimants.

****

ARCHANA PURI, J.

These are four appeals filed to assail the Award dated 01.08.2017, whereby, compensation was granted, in the claim petitions filed on the account of death of Kamal Kumar Juneja and injury sustained by Rita Juneja, in a motor vehicular accident, which took place on 04.09.2014.

FAO-768-2018 and **FAO-857-2018** have been filed by the insurance company, thereby, assailing the Award, on the quantum of compensation and also sought exoneration of the insurance company, to pay the compensation, at first instance and to seek recovery of the same from the driver and owner thereafter.

FAO-1003-2018 and **FAO-1108-2018** have been filed by Baldev Raj, owner of the offending canter bearing registration No.PB-10CC-4095, to assail the Award, so passed, qua both the deceased and injured, on the quantum of compensation.

The essential facts, to be noticed, are as follows:-

That, on 04.09.2014, at about 2.00 p.m., Rita Juneja (claimant-injured) along with her husband Kamal Kumar Juneja (since deceased) and other family members, had left Ludhiana for Delhi, in their car Santro bearing registration No.DL-8CAA-6893, after marriage of their relative. At about

8.00 p.m., when they reached near village Haldana border, G.T. Road, Samalkha, District Panipat, they stopped their car on the katcha portion of the road, as tyre of their car got punctured. They put the reflectors on the backside and also switched on the parking lights. The motorcycle of the mechanic was also standing at the spot. Bindu s/o Umar Singh was changing the wheel of the car. In the meantime, the offending canter bearing registration No.PB-10CC-4095, driven by Dalvinder Singh (respondent No.1 before learned Tribunal), in a rash and negligent manner, came from Panipat side and directly hit the motorcycle of the mechanic and the car of Kamal Kumar Juneja, as a result whereof, both Rita Juneja and Kamal Kumar Juneja, received multiple serious injuries. The driver of the offending canter, immediately turned back his vehicle and fled away from the spot, but the number plate of the said vehicle, fell down at the place of accident. The brother of the Kamal Kumar Juneja called the Ambulance and they were shifted to Community Health Centre, Samalkha. However, they were referred to Civil Hospital, Panipat, but Kamal Kumar Juneja, died on the way to Panipat. FIR was got registered qua the accident in question. Later on, the name of the driver was disclosed as, ‘Dalvinder Singh’, who faced trial before Sub Divisional Judicial Magistrate, Samalkha.

In the claim petition filed at the instance of Rita Juneja, she asserted herself to be 48 years old housewife and self-employed, thereby, earning Rs.4,000/- per month. She sustained multiple injuries on her person and was treated in Prem Hospital, Panipat. She had spent Rs.1 lakh on her treatment and as such, she had sought compensation to the extent of Rs.3 lakh, together with the interest.

Likewise, vis-a-vis death of Kamal Kumar Juneja, wife Rita Juneja, children as well as parents of the deceased had asserted about Kamal Kumar Juneja to be 49 years old, at the relevant time, self-employed and was earning Rs.60,000/- per month and they laid claim for a sum of Rs.80 lakhs, together with the interest.

On appraisal of the evidence, brought on record, learned Tribunal had reached the conclusion that accident had in fact, taken place, due to rash and negligent driving of canter bearing registration No.PB-10CC-4095, driven by respondent-Dalvinder Singh, on the basis whereof, injuries were inflicted on the person of Rita Juneja and Kamal Kumar Juneja, as a result thereof, Kamal Kumar Juneja had died.

On the basis of the evidence adduced, learned Tribunal had granted compensation to the extent of Rs.30,429/-, on account of injuries sustained by Rita Juneja and with regard to death of Kamal Kumar Juneja, compensation to the extent of Rs.89,55,940/- was granted to the claimants.

However, respondent-Dalvinder Singh was held to be not having valid and effective driving licence, to drive the offending canter, at the relevant time and consequently, concluded about there to be violation of terms and conditions of the insurance policy, as a result whereof, insurance company was directed to satisfy the third party claim/award and was given recovery rights qua the insured.

So far as, the fact of accident and manner of taking place of the same is concerned, the same is disputed by Baldev Raj-owner of the offending canter, in the appeals, filed by him. However, in this regard, suffice to make reference to the testimony of injured Rita Juneja-PW-1, who was occupant of the ill-fated car. In her affidavit Ex.PW1/A, she has deposed in verbatim with the pleaded case, about the rashness and negligence imputed upon Dalvinder Singh, while driving the offending canter. Furthermore, her version gains strength from the MLR, which is Mark A1, which establish about the sustaining of injuries by her, being occupant of the ill-fated car, at the relevant time. Besides the same, claimants also proved FIR Ex.P4. Even, copy of the report under Section 173 Cr.P.C. is Ex.P7 and certified copy of the charge-sheet is Ex.P6, which sufficiently establish about Dalvinder Singh to be facing trial before the Court of SDJM, Samalkha, in connection with the accident in question. Above all, Dalvinder Singh, in the capacity of being driver of the offending canter, at the relevant time, was the best person to substantiate the plea of denial of the accident, being result of rash and negligent driving of the canter, at his instance, but however, he has not stepped into witness box. Thus, considering the kind of evidence, brought on record, the findings, so recorded by learned Tribunal, with regard to the fact and manner of the accident, as such, stands affirmed.

Proceeding further, let us firstly consider the case of death of Kamal Kumar Juneja, in the accident in question. In the claim petition, Kamal Kumar Juneja is asserted to be 49 years old, working as property dealer and earning Rs.60,000/- per month. PW-1 Rita Juneja, in her affidavit Ex.PW1/A has deposed to this effect.

However, learned Tribunal, while placing reliance upon the photocopy of the Voter card of Kamal Kumar Juneja Mark A-2, had observed that he was alleged to be 46 years old, as on 01.01.2011 and considering the date of accident, to be 04.09.2014, it was concluded that the deceased was 49 years old. However, it should be noted that in the income tax return Ex.P3, which has been filed by the deceased himself, prior to his death, his date of birth has been mentioned as 14.05.1964. A specific date, as such, has been mentioned by the deceased himself and thus, it is appropriate to consider the same, as compared to the recitals of Mark A-2 and so calculating, on the date of accident i.e. 04.09.2014, the deceased is established to be more than 50 years.

To establish about the earnings of the deceased, on account of his indulgence as property dealer, besides the testimony of Rita Juneja, there are income tax returns, for the assessment year 2013-2014 and 2014-2015 Ex.P2 and Ex.P3, depicting the gross income as Rs.10,21,589/- and Rs.7,66,787/-, respectively. The income tax return for the assessment year 2014-15 was filed by the deceased, soon before his death. It reveals about the gross total income to be Rs.7,66,787/-. This was taken into consideration by learned Tribunal and as per ***Pranay Sethi's case***, tax component was deducted, which was to the extent of Rs.61,782/- and after making the said deduction, the earnings were taken to be Rs.7,05,005/-. Further, to the said amount, addition of 30%, as future prospect was made and the future prospects were considered as Rs.2,11,501/- and earnings was worked upon as Rs.9,16,506 (Rs.7,05,005+ Rs.2,11,501). On the basis thereof, on the account of personal expenses, 1/4th amount was deducted and dependency was worked upon as Rs.6,87,380/- (Rs.9,16,506-Rs.2,29,126). Considering the age of the deceased as 49 years, the multiplier of '13' was applied and

National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009 total loss of dependency was worked upon as Rs.89,35,940/- (Rs.6,87,380x13).

Besides the same, learned Tribunal had granted another sum of Rs.10,000/- on the count of transportation, last rites and also, another Rs.10,000/- was granted, on the count of 'loss of consortium'. Thus, the total compensation, granted by learned Tribunal was Rs.89,55,940/-.

However, the compensation, so worked upon, as aforesaid, calls for re-computation, as per prevalent settled law. Firstly, as already observed aforesaid, the age of the deceased is established to be 50 years plus. As per ***Pranay Sethi's case***, on the count of future prospects, addition of 10% ought to be made. Besides the same, as per ***Sarla Verma's case***, the suitable multiplier is '**13**', as applied by learned Tribunal. However, the earnings of the deceased, as taken by learned Tribunal, needs to be scaled down. Close perusal of Ex.P3, which is the income tax return for the assessment year 2014-2015, reveals that the total income taken as Rs.7,66,787/-, also included income from the house property, which is to the extent of Rs.4,58,114/-. This amount, in toto, has been taken into consideration, which, in fact, is erroneous.

No doubt, income tax returns, are reliable evidence to determine the income of the deceased, more particularly, when there is no evidence to the contrary, led to show about the return giving the inflated earning of the deceased. However, the question, which now arises before this Court is, as to whether, the entire amount under '**income from house property**', should be deducted or not. In this regard, reference is made to ***K.Ramya and others***

Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77,

vs. National Insurance Company Ltd. and another, 2022(4) RCR (Civil) 435, wherein, it was observed by the Hon'ble Supreme Court, as herein given:-

> *21. Now, the sole issue which remains before this court is whether the entire amount under 'Income from House Property and Agricultural Land' should be deducted or not. In this respect, we are guided by the observations of this court in State of Haryana v Jasbir Kaur [16] wherein it was noted that -*
>
> *8. xxxx*
>
> *The land possessed by the deceased still remains with his legal heirs. There is however a possibility that the claimants may be required to engage persons to look after agriculture. Therefore, the normal rule about the deprivation of income is not strictly applicable to cases where agricultural income is the source. Attendant circumstances have to be considered.*
>
> *(Emphasis Applied)*
>
> *In our opinion, the abovementioned observations, though made in the context of agricultural land, would also be applicable to rent received from leased out properties as the loss of dependency arises mainly out of loss of management capacity or efficiency. As a rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in light of specific circumstances. The appropriate approach, therefore, is to determine the value of managerial skills along with any other factual considerations.*
>
> ***State of Haryana v Jasbir Kaur (2003) 7 SCC 484***

In the instant case, deceased Kamal Kumar Juneja was a property dealer and precisely, on this account, his managerial skills required to supervise the properties, would be having an edge. He is bound to be having more sophisticated contact management skills and goodwill amongst the business community. Therefore, the value of his managerial skills ought to be on higher side, as compared to others, who are not following, such kind of avocation. In the light of the same, so far as, deceased Kamal Kumar Juneja is concerned, the computation of the necessary managerial skills with regard to house property, is hereby taken to be 25%.

Besides the same, as per prevalent settled law, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in ***Pranay Sethi's case (supra)***. In ***'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'***, the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium, which view, has been further endorsed in ***Harpreet Kaur and others vs. Mohinder Yadav and others, 2023(1) RCR (Civil) 327***, and in this regard, also, reference is made to ***Janabai and others vs. M/s I.C.I.C.I. Lambord Insurance Company Ltd., 2022(4) RCR (Civil) 85***.

In consonance with the observations made in ***Pranay Sethi's case (supra)***, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

In the light of the same, re-computation of the compensation, is made in the tabular form, as herein given:-

Gross income on the basis of income tax returns 2014-2015	:	Rs.7,66,787/-
Deduction on the count of of house property	:	Rs.4,58,114/-
Income	:	Rs.3,08,673/-
Addition of 25% on the basis of managerial skills	:	Rs.1,14,528/- (Total Rs.4,23,201)
In view of age of the deceased	:	Rs.42,320/-

Addition of 10% as future prospects		
Deduction of 1/4th	:	Rs.4,65,521-1/4th=Rs.3,49,141/-
Multiplier of '13'	:	Rs.3,49,141x13=Rs.45,38,833/-
Loss of consortium (six dependents)	:	Rs.2,90,400/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	**Rs.48,65,533/-**

Now, let us consider the claim, vis-a-vis, injury sustained by Rita Juneja. While, in the witness box, injured-Rita Juneja, in her affidavit Ex.PW1/A, has stated about the injuries sustained by her in the accident in question. She has deposed about her admission in Prem Hospital, Panipat and further, has also deposed about having shifted to PENTAMED Hospital, Delhi, where, she remained admitted for one day. However, it is pertinent to mention that no evidence, with regard to her admission and treatment undergone in the hospitals, as such, has been proved. But anyhow, she had sustained injuries, relating to which, MLR has come on record as Mark A1. Besides the aforesaid, even the bills and receipts have been proved, which are, Ex.P1, Ex.P9 to Ex.P12, the total whereof is Rs.24,429/-. This is the amount of expenditure, which is incurred on her treatment. Besides the same, also it is pertinent to mention that even though, injured had asserted about her earnings to be Rs.4,000/- per month, being self-employed, but this fact, as such, does not stand established. But anyhow, considering her to be a homemaker, it is quite obvious that the value of her services, ought to be taken into consideration. A woman of the house is a spinning wheel of the family and on account of the injuries sustained, definitely, for some period of time, injured must not have been able to perform her duties and look-after the house, in the manner, as she used to look-after, prior to the accident in question. This fact, has also to be taken into consideration, while making assessment of the compensation.

She must have been taking rich diet, during the process of recovery and the amount granted by learned Tribunal, on this count, is on lower side. Besides the same, towards the count of 'pain and suffering', a sum of Rs.3000/- has been awarded by learned Tribunal, which also calls for enhancement. Considering the aforesaid fact, besides the amount of Rs.24,429/-, which is the amount of the expenditure incurred on her treatment, considering the aforesaid factual scenario, vis-a-vis, role of the injured, being homemaker and also, on account of having passed through the pain and suffering, this Court deems it appropriate to grant a sum of Rs.40,000/-, over and above the amount granted by learned Tribunal.

In this backdrop, after working upon the compensation to be granted to the claimants, now arises the question of liability to the pay the amount of compensation. Learned Tribunal, on the basis of the evidence, had reached the conclusion about there to be violation of terms and conditions of the insurance policy Ex.R3, as a result whereof, the insurance company was directed to satisfy the 3rd party claim/award and was given further right to recover the same from the insured against respondent No.2-Baldev Raj. Said Baldev Raj, besides disputing the manner of accident, as already observed aforesaid, also disputed the recovery rights, so given to the insurance company. The driver and owner have placed on record the photocopy of the driving licence of Dalvinder Singh, which is Ex.R1, which reveals about Dalvinder Singh to be holding valid and effective driving licence to drive motorcycle and LMV from 20.09.2011 to 19.09.2014. However, perusal of the registration certificate, Ex.R2 reveals that the class of offending vehicle was MGV i.e. medium goods vehicle and the same was insured with the insurance company, vide policy Ex.R3, under the category of commercial vehicle.

Baldev Raj has himself stepped into witness box as RW-1 and he has deposed about Dalvinder Singh, vide Ex.R1, to be authorised to driver motorcycle and LMV. He was also given a suggestion, which he admitted to be correct that licence Ex.R1 is not authorised to drive medium goods vehicle. Likewise, RW-2 Jasdev Singh, Junior Assistant, DTO Office, Ludhiana had also stated that Dalvinder Singh was holding valid driving licence w.e.f. 20.09.2011 to 19.09.2014 and was authorised to drive motorcycle and LMV only. He proved the copy of the extract of the relevant register Ex.R7 and report Ex.R8.

While considering the aforesaid evidence, it is pertinent to mention that in each case, on evidence led before the Tribunal, decision has to be taken, whether the fact of driver possessing licence for one type of vehicle, but found to be driving another type of vehicle, was the main or contributory cause of accident. At this stage, also it is pertinent to mention that the mechanism of driving a vehicle like motorcycle or LMV, is quite different, as compared to the goods carrier vehicle. Since, mechanism is different, the control of the driver over the vehicle is also bound to be different, while driving two different types of vehicles. Moreover, learned counsel for the owner of the offending vehicle-Baldev Raj, has submitted that no evidence, has been brought on record, with regard to the driver-Dalvinder Singh not adept to drive goods carrier vehicle and therefore, the insurance company, as such, cannot be granted recovery rights. However, the aforesaid submission is not tenable. It is a matter of common knowledge that the driving mechanism of motorcycle or LMV, is different from mechanism of driving a goods carrier vehicle. Even, the insurance policy has been issued for commercial vehicle. In these circumstances, when the mechanism is different, it cannot be held that Dalvinder Singh was adept to driving a vehicle of different category, as with regard to the vehicle, for which he possess the driving licence.

In the light of the same, it is pertinent to mention that as already observed aforesaid, the accident had taken place, due to rash and negligent driving of a goods carrier by respondent-Dalvinder Singh. That being so, it was main or contributory cause of accident and precisely, on this account, handing over the goods carrier vehicle, to a person, having licence for driving the motorcycle or LMV, is violation of terms and conditions of the insurance policy. That being so, learned Tribunal had rightly directed the insurance company to satisfy the 3rd party claim/award and further given the recovery rights, qua the insured.

In view of the aforesaid discussion, the appeal filed by the Insurance Company i.e. **FAO-768-2018**, vis-a-vis death of Kamal Kumar Juneja, is allowed and consequently, the compensation granted to the extent of **Rs.89,55,940/-** is hereby scaled down to **Rs.48,65,533/-**.

FAO-857-2018, vis-a-vis, injuries sustained by Rita Juneja, is hereby dismissed, the compensation, earlier granted to the extent of Rs.30,429/-, stood enhanced to Rs.70,429/-.

However, **FAO-1003-2018** and **FAO-1108-2018** filed by appellant-Baldev Raj, owner of the offending vehicles, are hereby dismissed.

So far as, the compensation granted to the claimants is concerned, in view of the aforesaid observation, with regard to the acceptance of the appeal and dismissal of the appeals, furthermore, all the other terms, including apportionment and disbursement, shall remain the same, as ordered by learned Tribunal.

However, on the enhanced amount of the compensation i.e. Rs.40,000/- granted in FAO-857-2018, the claimant-Rita Juneja, shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation.

December 05, 2023 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**