IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 771/2018 (O&M)

Date of decision: 09.05.2023.

Reliance General Insurance Company Ltd.
………………Appellant

Vs.

Smt. Sunita and others

………………Respondents

FAO 5722/2018 (O&M)

Smt. Sunita and others
………………Appellants.

Vs.

Pawan Kumar and others
……………..Respondents.

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sanjeev Kodan, Advocate for the appellant-Insurance Co.

Mr. Kamal Chaudhary, Advocate for claimants/respondents 1 to 4 herein

None for respondents 5 and 6.

Nidhi Gupta, J.

1. By this common order I shall dispose of two cross-appeals same being FAO No.771/2018 filed by the Insurance Company; and FAO No.5722/2018 filed by the claimants. Both the appeals are being disposed of by common order as the facts and questions of law involved in these appeals are identical, and further both the appeals arise from the same Award dated 19.12.2017 passed by Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') in claim petition No.

MACP/382/2017 filed under Sections 166 and 140 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

2. For the sake of convenience parties are being referred to as per their litigative status in the FAO no. 771 of 2018 filed by the Insurance Company.

3. Vide the impugned Award the ld. Tribunal has granted compensation of Rs.28,76,600/- to the claimants along with interest @ 6% per annum from the date of filing of the claim petition till realization. Ld. Tribunal granted compensation as above on account of death of Manoj, aged 24 years. Claimants were widow, two minor sons and mother of the deceased, Manoj.

4. It is the pleaded case of the claimants that on 4.2.2017 the deceased along with pillion-rider Raju Yadav was going to Village Bhainsrawali on a motorcycle which was being driven by deceased. At about 1.20 pm when they reached at Gajrola Hasanpur Road near Gaurav Nursery, the Canter bearing registration No. GJ-02-XX-1898 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.5 in a rash and negligent manner came from Hasanpur side and hit the motorcycle as a result of which Manoj and Raju Yadav fell on the road and deceased suffered grievous injuries and died at the spot. Even the pillion rider Raju Yadav PW2 suffered some injuries. On the statement of eyewitness PW2 Raju Yadav, FIR No.123 dated 4.2.2017 was registered u/s 279, 337, 338, 304-A and 427 IPC at PS Hasanpur, District Jyotibafullay Nagar.

5. Ld. Tribunal on the appraisal of facts, pleadings and evidence on record held that the deceased had died due to injuries suffered by

him in motor vehicular accident that took place on 4.2.2017 due to rash and negligent driving of the offending vehicle being driven by respondent no.5, owned by respondent no.6 and insured by appellant herein. Respondents 5, 6 and appellant were held jointly and severally liable to pay the compensation.

6. Ld. counsel for the appellant Insurance Company assails the impugned Award on the ground that the ld. Tribunal has taken the income of the deceased on higher side as Rs.13,500/-. It is submitted that the income of the deceased was not proved on record and therefore, ld. Tribunal ought to have taken the same as per relevant Minimum Wage Notification. It is submitted that even no witness was examined by the claimants to prove the alleged income of the deceased.

7. Second contention on part of the Insurance Company is that age of the deceased was proved to be 27 years and therefore, ld. Tribunal ought to have applied multiplier of 17 whereas ld. Tribunal has applied multiplier of 18.

8. It is further submitted by the ld. counsel for the Insurance Company that ld. Tribunal has granted Rs.1,55,000/- under the conventional heads. It is submitted that as per latest judgment of the Hon'ble Supreme Court in **Shri Ram General Insurance Company Limited v Bhagat Singh Rawat & anr; others, C.A.No.2410-2412/2023,** total sum of Rs.70,000/- only, (with 10% increase after every 3 years) can be granted.

9. It is also submitted by the ld. counsel for the Insurance Company that contributory negligence on the part of the deceased was proved on record yet ld. Tribunal has made no deduction on account of same. It is submitted that ld. Tribunal has framed issue no.1 as to whether the deceased had expired due to rash and negligent driving of the offending vehicle by respondent no.5 herein,

onus to prove which was upon the claimants. It is submitted that the ld. Tribunal failed to appreciate that the present accident was a head-on collision and therefore, the deceased was also liable for causing the accident because as per the investigation report the motorcycle which was being driven by the deceased was on the wrong side and negligently the deceased had hit the offending vehicle. It is submitted that the sole eyewitness of the accident PW2 Raju Yadav had admitted in his cross-examination that "*the offending vehicle hit us from front*" meaning thereby that it is admitted case of the claimants that the accident was a head on collision. It is submitted that accordingly, 50% deduction is required to be made towards contributory negligence. In support, ld. counsel relies upon judgment of the Hon'ble Supreme Court in **Bijoy Kumar Dugar v Bidyadhar Dutta and others, Law Finder Doc Id # 119539,** to submit that it has been held that where there is head on collision between the vehicles, drivers of both the vehicles should be held responsible to have contributed equally to the accident. It is submitted that in the relied upon case the Insurance Company of the offending vehicle-a Bus- was therefore, held liable to pay only half of the compensation awarded by the Tribunal. It is submitted that in the present case also the eyewitness himself has admitted that the accident in question was a head-on collision, but the ld. Tribunal has ignored this aspect of the matter.

10. Per contra, it is submitted by the ld. counsel for the claimants that cogent evidence was led by the claimants to prove the income of the deceased. It is submitted that the claimants had produced not just documentary evidence on record but had also examined PW3 Rajiv Kumar who was Accountant in the firm where the deceased was employed. It is submitted that accordingly there can be no issue with respect to income of the deceased

especially in view of the fact that no evidence in rebuttal was led by the Insurance Company.

11. As regards age of the deceased, it is submitted by the ld. counsel for the claimants that it was incontrovertibly established that at the time of death/accident the deceased was 24 years 9 months old. It is submitted that it is not clear as to how it is asserted by the ld. counsel for the Insurance Company that the deceased was 27 years of age at the time of accident.

12. As regards grant of compensation under the conventional heads, ld. counsel for the claimants is unable to dispute the judgment of the Hon'ble Supreme Court in **Bhagat Singh's** case (supra), neither has learned counsel for the claimants cited any judgment to the contrary.

13. As regards finding of contributory negligence, it is submitted by the Ld. Counsel for the claimants that the ground of contributory negligence was not taken by the Insurance Company before the ld. Tribunal. It is submitted that accordingly, said plea is not available to the Insurance Company at this stage.

14. It is further submitted by the Ld. Counsel for the claimants that compensation granted by the ld. Tribunal deserves to be enhanced as it has been proved on record that the deceased was a salaried employee as Production Quality Controller in Victoria Creations and was earning Rs.15,500/- per month. It is submitted that the ld. Tribunal on the basis of evidence produced before it had correctly held that after necessary deductions deceased was drawing salary of Rs.13,500/- per month. It is submitted that accordingly, as per judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, ld. Tribunal ought to

have made an addition of 50% towards future prospects, however, ld. Tribunal has made addition of 40% only towards future prospects.

15. The second ground on which the Ld. Counsel for the claimants seeks enhancement of compensation is that interest has been granted @ 6% per annum whereas the same ought to be 18% per annum from the date of filing of the claim petition till realization.

16. No other argument has been raised.

17. Heard ld. counsel.

18. Perusal of the record of the case shows that ld. Tribunal has awarded compensation in the following manner:

19. Age of the deceased was proven to be 24 years 9 months at the time of death on the basis of his driving licence Ex. P1 in which date of birth of the deceased was mentioned as 3.5.1992. Date of accident is 4.2.2017. As such, at the time of accident deceased was 24 years 9 months i.e. less than 25 years.

20. As regards income of the deceased, perusal of the record shows that the claimants examined PW3 Rajiv Kumar, Accountant in Victoria Creations to prove employment of the deceased as Production Quality Controller in said company. PW3 had produced and proved Ex.P22 (available at page 187 of the record of the Tribunal) which is the 'Employee Certificate' issued by Victoria Creations to certify that the deceased was working in the said company from 25.10.2016 as Production Quality Controller, and as per which the salary of the deceased was Basic and D.A.- Rs.10,500/-, HRA- Rs.3,000/-; CA- Rs.2000/-, total salary Rs.15,500/-; Exhibit P-23 (from page 189 to 207 of the record of the Tribunal) is Salary and Wages Register of the

company/Victoria Creations; Ex. P-24 (From page 209 to 218 of the LCR) is the attendance record for the months of October 2016 to February 2017. PW3 has produced and proved all of the above said documents on record. Accordingly, in my view the employment of the deceased as Production Quality Controller with Victoria Creations is incontrovertibly proven on record. Even otherwise, no evidence in rebuttal has been led by the Insurance Company. Therefore, I find no error in the income of the deceased determined by the ld. Tribunal as Rs.13,500/- per month.

21. As regards addition of future prospects, I find merit in the submission made on behalf of ld. counsel for the claimants that the deceased being a salaried employee an addition of 50% ought to have been made towards future prospects in accordance with decision of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra).

22. As regards conventional heads, ld. counsel for the claimants is unable to dispute judgment of the Hon'ble Supreme Court in **Bhagat Singh's** case (supra). Accordingly, a total sum of Rs.77,000/- could only have been awarded under the conventional heads.

23. As regards contributory negligence, perusal of the written statement filed by the Insurance Company before the ld. Tribunal shows that ground/plea of contributory negligence was not taken by Insurance Company before the ld. Tribunal. No doubt onus to prove whether the accident in question had occurred due to rash and negligent driving of respondent no.1 was upon claimants, and, as per the impugned Award, the claimants have sufficiently proved the same for it to be decided in their favour. Admittedly, plea of contributory negligence has not been taken by the Insurance Company in the

written statement filed by it before the ld. Tribunal. Moreover, the Insurance Company has not examined respondent no.5/driver of the offending vehicle who was best witness in this case. Even otherwise, perusal of the record of the Tribunal shows that in his testimony, PW2-Raju Yadav who was pillion riding behind the deceased and was therefore, eyewitness to the accident has categorically stated in his cross examination that "*offending vehicle hit us from front. Our vehicle was on extreme left-hand side of the road.*" (emphasis supplied) Admittedly, Insurance Company has led no evidence to controvert the said evidence led by the claimants. Accordingly, in my clear view contributory negligence on the part of the deceased is not proved on record. Judgment of the Hon'ble Supreme Court in **Bijoy Kumar's** case (supra) relied upon by the Insurance Company is distinguishable on facts and will, therefore, not be applicable in the present case. Besides the facts as noted hereinabove, this Court in case of **Shriram General Insurance Company Ltd. V IDRIS and others: Law Finder Doc Id # 2007687**, has also held that head-on collision does not always imply contributory negligence on part of both the drivers.

24. In view of the above discussion, both the appeals are partly allowed and compensation payable to the claimants is reworked as under:

Sr.No.	HEAD	MACT (amount in Rupees)	APPEAL (amount in Rupees)
1	Monthly income	13,500/-	13,500/-
2	Future prospects	40%=5,400/-	50%=6,750/-
3	Monthly income	18,900/-	20,250/-
4	1/3rd deduction	6,300/-	6,750/-
5	Monthly dependency	12,600/-	13,500/-
6	Annual dependency	1,51,200/-	1,62,000/-

7	Multiplier	18	18
8.	Total loss of dependency	27,21,600/-	29,16,000/-
9.	Conventional heads	1,55,000/-	77,000/-
10.	Total compensation	28,76,600/-	29,93,000/-
11	Interest	6% p.a.	6% p.a.

25. Both the appeals stand **partly allowed** in above terms.

26. Application(s), if any, stand disposed of.

27. A copy of this order be placed on the file of FAO No.5722/2018.

09.05.2023. **(Nidhi Gupta)**
Joshi **Judge**

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