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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-400-2022 (O&M) WITH
XOBJC-95-2022 (O&M)
Date of decision: April 27, 2023

United India Insurance Company Limited

....Appellant

versus

Sonkali and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. D.P. Gupta, Advocate,
Mr. Shubham Gupta, Advocate for appellant-Insurance Company.

Mr. Arvind Kumar Yadav, Advocate
for respondentNo.1-Cross-Objector.

Nonefor respondents No.2 and 3.

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ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company seeking to set aside impugned award dated 10.08.2021 rendered by learned Motor Accidents Claims Tribunal, Rewari (for brevity, "Tribunal"). Respondent No.1 Sonkali/claimant has filed cross-objection seeking to enhance the compensation amount of Rs.27,18,000/-, as awarded by learned Tribunal.

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

> "*2. The brief facts are that in the intervening night of 07/08.04.2018 the deceased was going towards Jaipur side in Canter bearing registration No.HR99ACE (Temp) 7166 being its driver. When he reached near Pahwa Filling Station on NH-8 in the area of village Kathuwas his vehicle hit against the Traula bearing registration No. HR-69C-3021 which was wrongly parked in the middle of the road without any indication. Sunil Kumar was present there and he witnessed the accident. The matter was reported to P.S.Kasola and on the statement of Sunil Kumar FIR No.66 dated 08.04.2018 under Sections 283,304A IPC was registered against the respondent No.1 who was the driver of the offending vehicle at the time of accident. The respondent no. 1 being driver, respondent no. 2 being registered owner and the respondent no. 3 being insurer of the offending vehicle are jointly and severely liable to pay compensation to the claimants.*"

3. Upon notice, respondents No.2 and 3 herein (driver and owner of alleged offending vehicle) filed written statement raising preliminary objections regarding maintainability, cause of action. It was averred that respondent No.1 was the driver of Traula bearing registration No.HR-69C-3021, the vehicle was insured with United India Insurance Co. Ltd. and appellant-Insurance Company was liable to pay the compensation.

3.1. On merits, it was stated that alleged accident had not taken place with offending vehicle. The offending vehicle was not involved in the accident. FIR No.66/2018, under Sections 283,304A IPC was got registered at Police Station, Kasola, against respondent No.1 in collusion with the local police. It was denied that Rs.1 lakh was spent in transportation of dead body and last rites of the deceased. It was also denied that deceased was 30-year old and was earning Rs.18,000/-per month and prayed for dismissal of claim petition.

3.2. Appellant-Insurance Company filed its written statement taking preliminary objections regarding maintainability, suppression of true and material facts. It was averred that respondent No.1 was not holding a valid driving license at the time of accident. The accident occurred due to negligence of deceased himself. The insured violated the terms and conditions of insurance policy as vehicle was being plied without permit and fitness.

3.3. On merits, it was denied that alleged accident had taken place with offending vehicle. A false case was registered with the intention to extort money. The offending vehicle was not involved in the accident but falsely implicated in this case. FIR in question was got registered against respondent No.1 in collusion with the local police. Rest of the pleas were denied and prayed for dismissal of claim petition.

4. Learned Tribunal framed the following issues:

> "*1. Whether Devender died in a vehicular accident that took place due to rash and negligent driving of the offending Traula bearing registration No. HR-69C-3021 by respondent No.1 as alleged in the petition? OPP*

> 2. *If issue no. 1 is proved whether the petitioners are entitled to compensation as claimed? If so as to what amount? OPP*
> 3. *Whether respondent no.1 was not holding a valid driving license on the date of accident. If so its effect? OPR*
> 4. *Relief.*"

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 to 3 in favour of claimants. Consequently, claimants were held entitled to compensation of Rs.27,18,000/- along with interest @ 6% per annum from the date of filing of claim petition.

6. Learned counsel for appellant-Insurance Company contends that it is a case of contributory negligence on the part of deceased while driving Canter as well as driver of offending vehicle. He contends that claimant No.2 (father of the deceased) died during pendency of proceedings before learned Tribunal, therefore, deduction on account of dependency ought to be 1/2 instead of 1/3rd as taken by learned Tribunal. He further contends that income of the deceased has also been taken on higher side i.e., Rs.15,000/- per month.

7. On the other hand, learned counsel for claimant-respondent No.1/Cross objector submits that learned Tribunal has not granted anything on account of loss of parental consortium. He submits that deceased was sole bread winner in the family and had six sisters, out of which, one sister is still unmarried. Therefore, deduction of dependency of 1/3rd for personal expenses of the deceased is to be applied in the present case while calculating compensation thereon. In support, learned counsel relies on a decision rendered by Supreme Court in **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**. Relevant part thereof is reproduced herein below:

> "*8.2. With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor.*
>
> *This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger*

non-earning sisters or brothers, his personal and living expenses may be restricted to one-third, as contribution to the family will be taken as two-third.

Considering that the deceased was living in a village, where he was residing with his aged father who was about 65 years old, and Respondent No.2 an unmarried sister, the High Court correctly considered them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count."

7.1. Further submits that learned Tribunal assessed income of the deceased @ Rs.15,000/- per month, but it ought to be Rs.18,000/- per month which is duly proved by evidence on record and deceased was a driver of transport vehicle and the same remained un-rebutted. He also contends that a meagre amount has been awarded on account of loss of estate and funeral expenses and the same need to be enhanced. He also contends that interest @ 6% per annum granted on the compensation amount is also on lower side.

8. I have heard learned counsel for the parties and perused case file.

9. Concededly, deceased was a truck driver, which is heavy vehicle and requires certain higher level of expertise than normal vehicle. His employer, (the truck owner) had deposed that deceased was paid Rs.18,000/- per month salary. In cross-examination, his testimony remained un-impeached. In view of this specific evidence, I am unable to persuade myself to agree with the conjecture finding returned by learned Tribunal that deceased was earning Rs.15,000/- per month. To my mind, the income of the deceased ought to be assessed at Rs.18,000/- per month.

9.1. The argument of contributory negligence on the face of it is as insipid as it can be as the facts of the case speak for itself. The accident took place at the ungodly hours past mid-night at 1:00 a.m. and offending vehicle with which vehicle of the deceased collided was admittedly parked on the road in the dead darkness of wee hours. Therefore, it is obvious that the accident was caused entirely by negligence of driver of the Truck, which was parked without any warning signs. Pertinently, every vehicle these days, which is sold is mandatorily provided with triangular shape warning signs/ reflectors to be used in such an emergent situation. Even if it is assumed that truck had to be parked owing to some breakdown and could not be towed away at that time in the night. In fact, it is with this intent that a specific provision under Section 122 of the Motor Vehicles Act, 1988 contains the following:

> "***122. Leaving vehicle in dangerous position. –*** *No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers.*"

10. Be that as it may, there is nothing on record to show as if there was some breakdown of the offending vehicle. Further even if there was a breakdown, it is not a case of contributory negligence of the deceased-driver and same is entirely attributable to driver of offending vehicle.

11. There is another aspect of the matter which requires to be noticed i.e., deceased was the only earning member of the family, as is borne out from the testimony of the witness. His father was also unemployed. He had one unmarried sister, who was totally dependent on the earnings of deceased-brother. Testimony of the father *qua* unmarried sister being dependent on the deceased has remained un-impeached (copy of which has been tendered in course of hearing and marked as Annexure 'X'). The relevant extract of cross-examination of father of deceased is reproduced herein below:-

> "*xx xx xx I have four sons and six daughters. All are married except my one daughter. xx xx xx*"

11.1. On a Court query as to why unmarried sister was not made a claimant, learned counsel for respondent No.1-claimant states that claimants are poor illiterate people and they do not know minutiae of legal procedure as they were not advised to make unmarried sister(s) as claimant.

12. On oral request of learned counsel for respondent No.1-claimant, unmarried sister of deceased, namely Kiran is added. Amended memo of parties has been tendered in course of hearing, which is taken on record. Registry to do the needful.

13. Having heard rival contentions and on perusal of impugned award, I find that the submissions made by learned counsel for appellant-insurance company 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 view taken by the learned Tribunal.

14. 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 Devender deserves enhancement.

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

Deceased	Devender
Date of accident/death	07/08.04.2018
Age	31years
Claimants	Mother, unmarried sister
Income of the deceased	Rs.18,000/-
Future prospects	40% (Rs.18,000+7,200) = Rs.25,200/-
Deduction in dependency for personal expenses	1/3rd (25,200-8,400)=Rs.16,800/-
Annual dependency	Rs.2,01,600/- (16,800 x 12)
Total loss of dependency with Multiplier of 16	Rs.32,25,600/-
Loss of Consortium	Rs.44,000/- x 2 = Rs.88,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total	Rs.33,46,600/- (32,25,600 + 88,000/- + Rs.33,000/-

MAHAVIR SINGH
2023.05.04 16:03
I attest to the accuracy and authenticity of this order/ judgment

Compensation awarded by the Tribunal	Rs.27,18,000/-
Enhanced amount of compensation to be paid	**Rs.6,28,600/-** (Rs.33,46,600-Rs.27,18,000/-)

15. Accordingly, impugned award is modified in terms of above computations. Enhanced compensation shall be payable to claimants along with interest @ 7% per annum, 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 by apportionment of 80% for the mother and 20% for the sister of the deceased.

16. In the premise, **FAO-400-2022** filed by Insurance Company stands dismissed and **XOBJC-95-2022** filed by claimant/cross objector disposed of in above terms.

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

(ARUN MONGA)
JUDGE

April 27, 2023
mahavir
Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No