IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **FAO-4332-2018 (O&M)**

IFFCO Tokio General Insurance Co. Through its Division Manager

… Appellant

Versus

Suresh wife of late Ram Chander and Others

... Respondents

2.. **FAO-3232-2019 (O&M)**

Suresh and Others

… Appellants

Versus

Suresh son of Mehar Singh and Others

... Respondents

Reserved On :- **11.10.2023**

Date of Decision:- **30.11.2023**

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Argued by :-
Mr. Rajnish Malhotra, Advocate
for the appellant/Insurance Company in **FAO-4332-2018** and
for respondent No.3-Insurance Company in **FAO-3232-2019**.

Mr. Ravinder Hooda, Advocate
for respondents No.1 to 5-claimants in **FAO-4332-2018** and
for the appellants/claimants in **FAO-3232-2019**.

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KARAMJIT SINGH, J.

1. Vide this common judgment the above-titled two connected appeals filed by appellant-insurance company and claimants, arising out of same accident, are being disposed of.

2. The brief facts of the case of the claimants is that claimant No.1 is widow while claimants No.2 and 3 are children and claimants No.4 and 5 are parents of deceased Ram Chander. That all the claimants were dependent on the deceased, who was 55 years of age and was an Ex-Serviceman and at the time of his death, the deceased was serving in Haryana State Vigilance Bureau, Rohtak as Sepoy and was getting Rs.21,550/- per month as pension and Rs.42,000/- per month as salary. He was also an agriculturist and was earning additional income of Rs.20,000/- per month from said avocation. That on 2.6.2017, deceased was going towards his village Khidwali on a motorcycle No.HR-12L-3417 and when he reached in the area Brahamwas Khidwali Road, in the meanwhile a truck No.HR-46-C-7113, which was driven in a rash and negligent manner by respondent No.1-Suresh son of Mehar Singh, struck against the motorcycle of deceased as a result of which, the deceased sustained multiple injuries and died at the spot. The offending truck was owned by respondent No.2-Dinesh and was insured with IFFCO Tokio General Insurance Company. The report with regard to aforesaid accident was lodged

with the police. The claimants filed claim petition under Section 166 of the Motor Vehicles Act seeking compensation worth Rs.70,00,000/- along with interest.

3. The claim petition was contested by the respondents. Respondents No.1 and 2 filed joint written statement wherein, it was denied that any such accident as alleged by the claimants involving truck No.HR-46-C-7113 had ever taken place. The other averments of the claim petition were also denied and it was pleaded that the claim petition be dismissed.

4. Insurance company filed separate written statement, taking preliminary objections that at the time of alleged accident, the driver of truck in question was not holding valid and effective driving license and further the truck was being driven in violation of the terms and conditions of the insurance policy. On merits, the factum of the alleged accident was denied. The other averments of claim petition were also denied and it was pleaded that the claim petition be dismissed.

5. On the pleading of the parties, the Tribunal framed following issues:-

i. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. truck bearing registration No.HR-46-C-7113 by respondent No.1? OPP

ii. If issue No.1 is proved, whether Ram Chander has died due to the injuries received by him in the above-said accident, if so to what amount of compensation and from whom the claimants are entitled to? OPP

iii. Whether there was willful violation of the terms and conditions of the insurance policy, if so to what effect? OPR-3

iv. Relief.

6. The counsel for the claimants examined PW-2 Anand, who deposed that on 2.6.2017, he came to know that his brother Ram Chander met with an accident and then he went to the place of accident and found the dead body of his brother lying there. He also deposed that matter was reported to the police and FIR No.236 dated 3.6.2017 (Ex.P2) was registered in police station Sadar, Rohtak with regard to aforesaid accident on the basis of his statement. PW-3 Mohinder deposed regarding the accident in question, which took place on 2.6.2017, in his presence. PW-4 Jasbir Singh, Accountant in the office of Superintendent of Police, State Vigilance Bureau, Rohtak produced the salary record of deceased Ram Chander and he stated that gross salary of the deceased for the month of May, 2017 was Rs.40,204/- and he proved the concerned salary statement Ex.P3 and annual salary statement Ex.P4 of the deceased. Claimant No.1 Suresh wife of Ram Chander, appeared in witness-box as PW-1 and proved post-mortem report Ex.P1 of deceased and also tendered documents Ex.P5 to Ex.P13.

7. On the other hand, Insurance Company examined RW-1 EASI Hawa Singh posted in office of Superintendent of Police, Rohtak who produced copy of salary statement of deceased Ex.R1 and insurance policy Ex.R2 was also tendered. Counsel for respondents No.1 and 2 tendered into evidence, copy of driving license of the driver of

offending truck Ex.R3 and copy of registration certificate of said vehicle Ex.R4.

8. The Tribunal decided all the issues in favour of the claimants and against the respondents and further held that the deceased, who was 55 years of age was employed as a Sepoy with Haryana State Vigilance Bureau and his last drawn salary was Rs.33,470/- and for the purpose of the claim petition, the income of the deceased was taken as Rs.32,970/- per month. The Tribunal also took into consideration the fact that PW-1 admitted that after the death of her husband, she has been getting Rs.30,000/- per month as salary as per Haryana Compassionate Assistance to the dependents of the Deceased of Government Employees Rules of 2006 (in short 'Rules of 2006'). The Tribunal also made addition of 15% of actual salary towards future prospects and accordingly assessed the monthly income of deceased as Rs.32,970/- plus Rs.4,945/- = Rs.37,915/- and finally assessed the total monthly income of the deceased as Rs.18, 427/- plus Rs.1,762/- plus Rs.37,915/- = Rs.58,104/- and annual income as Rs.6,97,248/- and after deducting tax of Rs.1,39,450/- @ 20%, net annual income for computing loss of dependency was assessed as Rs.5,57,798/- and applied multiplier of '**9**' and also held that the claimants are entitled to Rs.15,000/- on account of loss of estate, Rs.40,000/- as loss of consortium and Rs.15,000/- as funeral expenses and assessed total amount of compensation as Rs.38,35,132/-. The Tribunal further held that the family of the

deceased would be entitled to the benefit of Rules of 2006 only for a period of 34 months and the said amount comes out to be Rs.32,970/- x 34 = Rs.11,20,980/- and while holding that family is entitled to pension to the extent of 50% of the last drawn pay, assessed the total payable compensation as Rs.32,74,642/- (Rs.38,35,132– Rs.5,60,490). The claimants were held entitled to get aforesaid amount of compensation along with interest @ 9% per annum from the date of institution of the petition till its realization. The liability of driver, owner and insurer was held to be joint as well as several. Out of the total amount of compensation, claimant No.1 was held entitled to get sum of Rs.15,74,642/- while Rs.12,00,000/- are to be paid in equal shares to claimants No.2 and 3 and Rs.5,00,000/- to be equally shared by claimants No.4 and 5 and further 75% of the awarded amount was directed to be deposited in some Nationalized Bank in shape of FDR for a period of 3 years, on which the claimants were entitled to receive periodical interest.

9. Being aggrieved by the said award, the insurance company has filed FAO-4332-2018, while FAO-3232-2019 has been filed by the claimants.

10. I have heard the counsel for the parties.

11. The counsel for the insurance company while assailing the impugned award has submitted that in this case FIR was registered on the basis of the statement of brother of the deceased, against unknown vehicle, which was driven by some unidentified person. That from the perusal

of testimony of brother of the deceased who appeared in the witness box as PW-2, it is evident that he had not witnessed the alleged accident. The counsel has further contended that after 25 days of the incident, PW-3 Mohinder got recorded his statement with the police, whereby respondent Suresh was nominated as accused being driver of the offending vehicle. That PW-3 Mohinder is a made up witness being related to the family of deceased and there is nothing available on the record to substantiate his testimony.

12. The counsel for insurance company while referring to the judgments passed by the Hon'ble Supreme Court in **Reliance General Insurance Company Limited vs. Shashi Sharma and Others, 2016(4) RCR (Civil) 569** and **National Insurance Company vs. Birinder, 2020(11) SCC 356** has *inter alia* contended that the insurance company is entitled to deduct amount receivable by the dependents of the deceased Government employee in terms of Rules of 2006, towards financial assistance equivalent to the loss of pay and wages of the deceased employee for the specified period including military family pension. The counsel for the insurance company has further contended that in the instant case, Tribunal included family pension of Rs.19,000/-, which claimant No.1 is getting being widow of Ex-serviceman apart from the aforesaid amount receivable by the dependents under the Rules of 2006, which was against the settled position of law as has been cited above. The counsel for the insurance company further submits that the claimants are entitled to get total compensation worth Rs.18,48,000/- in place of Rs.32,74,642/- as has

been awarded by the Tribunal. So prayer is made that the appeal filed by the insurance company be accepted to the aforesaid extent while the appeal filed by the claimants be dismissed.

13. On the other hand, the counsel for the claimants while assailing the impugned award submits that the same requires modification as no compensation was granted by the Tribunal under the head of love and affection. It is further submitted that as per the law laid down in **National Insurance Company vs. Parnay Sethi, 2017(4) RCR(Civil) 1009** there should be 10% increase in compensation under conventional heads after every 3 years. The counsel for the claimants has further contended that the monthly income of the deceased was rightly assessed as Rs.58,104/- by the Tribunal and the Tribunal correctly included the financial assistance equivalent to loss of pay and wages of the deceased while assessing total monthly income. The counsel for the claimants has submitted that the appeal filed by the claimants be allowed to the extent stated above while the appeal filed by the insurance company deserves to be dismissed.

14. I have considered the submissions made by counsel for the parties.

15. In the instant case, FIR (Ex.P2) was registered on the very next day of the accident. From the perusal of the documents available on the record, it appears that PW-3 Mohinder got recorded his statement on 3.6.2017 with the police, wherein he disclosed the registration number of offending truck and name of its driver. The copy of the said statement is Ex.P7. From the perusal of Ex.P6, it is apparent that

during investigation of the case, the driver of offending vehicle namely Suresh son of Mehar Singh was arrested by the police and as per Ex.P5, the offending vehicle was released on Superdari by the Court concerned to its owner namely Dinesh son of Rajinder. PW-3 Mohinder while appearing in the witness-box stated on oath that he witnessed the accident in question, which was caused by aforesaid Suresh son of Mehar Singh while driving truck No.HR-46-C-7113, in rash and negligence manner, which resulted in death of Ram Chander. In the light of the above evidence, the Tribunal rightly decided issue No.1 in favour of the claimants. No ground is made out to interfere in the said findings recorded by the Tribunal.

16. Undisputedly, Ram Chander an Ex-serviceman was 55 years of age and was serving in Haryana State Vigilance Bureau, Rohtak as Sepoy, at the time of his death. Claimant No.1 is widow, claimants No.2 and 3 are children and claimants No.4 and 5 are parents of the deceased. The Hon'ble Apex Court in Birender's case (supra) has held that even major married and earning sons of deceased being legal representatives have right to apply for compensation in case of accidental death of their father. It being so, in light of the evidence available on the available on the record, the Tribunal rightly held that all the claimants are entitled to get compensation on account of death of Ram Chander.

17. The claimants being dependents of deceased Ram Chander, a Haryana Government employee were covered under Rules of 2006. PW-1

widow of Ram Chander, while appearing in the witness-box, admitted that she is getting Rs.33,000/- per month as salary of her husband as per Rules of 2006. She further stated that she is also getting Rs.19,000/- per month as pension being widow of Ex-serviceman. The Tribunal assessed the net salary of the deceased from Government service as Rs.32,970/- per month and added Rs.4,945/- on account of future prospects @ 15%. During arguments, the counsel for appellant-insurance company has not disputed the fact that the net monthly salary of the deceased was Rs.32,970/- and by adding Rs.4,945/- the same comes out to be Rs.37,915/- per month. However, the counsel for the appellant-insurance company while placing reliance upon **Sashi Sharma's** case (supra) and **Birender's** case (supra) has contended that as the family pension as well as the military pension received by claimant No.1 is not to be included while calculating the total monthly income of the deceased and in this manner the Tribunal fell into error as the military pension was included by it while assessing the total monthly income of the deceased as Rs.58,104/-.

18. As per the law laid down by Hon'ble Supreme Court in **Sashi Sharma's** case (supra), **Barinder's** case (supra), the insurance company is entitled to deduct amount receivable by the dependents of the deceased Government employee in terms of Rule 5(1) of the Rules of 2006 towards financial assistance equivalent to the loss of pay and wages of the deceased employees. As per Rule 5(2) of aforesaid Rules, the family of the deceased shall be eligible to receive family

pension as per the normal rules only after the period during which, he receives the financial assistance under these Rules. Thus making it apparent that the family pension, if any, given to the claimants by Haryana Government is to be excluded while assessing the total monthly income of the deceased. However, the question arises as to whether the family pension of Rs.19,000/- per month being received by claimant No.1 being widow of Ram Chander, an Ex-Serviceman is also to be excluded while calculating the monthly income of the deceased.

19. The Hon'ble Supreme Court in **Shashi Sharma's** case (supra), in para No.22 of the judgment has observed as follows:-

> "22. Indeed, similar statutory exclusion of claim receivable under the Rules of 2006 is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of Pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5 (1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. The amount receivable by the dependants / claimants towards the head of pay and allowances in the form of ex-gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the Rules of 2006 would come into play if the Government employee dies in harness even due to natural death. At the same time, the Rules of 2006 do not expressly enable the dependents of the deceased Government employee to claim similar amount from the tortfeasor or Insurance Company because of the accidental death of the deceased Government

employee. The harmonious approach for determining a just compensation payable under the Act of 1988, therefore, is to exclude the amount received or receivable by the dependents of the deceased Government employee under the Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased Government employee in the normal course. This is not to say that the amount or payment receivable by the dependents of the deceased Government employee under Rule 5 (1) of the Rules, is the total entitlement under the head of "loss of income". So far as the claim towards loss of future escalation of income and other benefits, if the deceased Government employee had survived the accident can still be pursued by them in their claim under the Act of 1988. For, it is not covered by the Rules of 2006. Similarly, other benefits extended to the dependents of the deceased Government employee in terms of sub-rule (2) to sub-rule (5) of Rule 5 including family pension, Life Insurance, Provident Fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependents of the deceased Government employee, applying the principle expounded in Helen C.Rebello and Patricia Jean Mahajan's cases (supra)."

20. Earlier also in **Helen C.Rebello (Mrs.) and Others vs. Maharashtra State Road Transport (1999)1SCC, 90**, it was held by the Hon'ble Supreme Court that:-

"Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor

Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly., family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against torfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any

> contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual."

21. In light of aforementioned settled position of law, the pension which was received by the deceased from Central Government being Ex-Serviceman cannot be deducted while assessing the total monthly income of the deceased as the same is totally different from the family pension, if any being received by the dependents of Haryana State Government Employee. Even when the deceased got re-employment with Haryana Government after his discharge from Indian Army, the deceased was getting military pension, which was separate from his salary being given by the State Government with regard to his employment in Haryana State Vigilance Bureau. The said military pension could not be deducted for the purpose of assessing total monthly income with the aid of provisions of Rule 5(2) of Rules of 2006. So the Tribunal rightly assessed the total monthly income of the deceased as Rs.37,915/- + military family pension of Rs.20,189/- = Rs.58,104/-.

22. There is no dispute with regard to multiplier of '**9**', which was applied by the Tribunal while taking into consideration the fact that the age of the deceased was more than 55 years. The Tribunal also rightly considered the dependency of the claimants on the deceased as 1/4th

in the light of law laid down by Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77**. In the light of the law by the Hon'ble Apex Court in **Parnay Sethi's** case (supra), the Tribunal rightly assessed future prospects @ 15%.

23. While passing the impugned award the tribunal assessed total benefits to be availed by the claimants under Rules of 2006 as Rs.11,20,980/-. As per the law laid down in **Shashi Sharma case (supra)**, the aforesaid amount received or receivable by the claimants being dependents of the deceased government employee under the Rules of 2006 towards the head of financial assistance equivalent to "pay and allowances" that was last drawn by deceased government employee in the normal course is to be deducted while assessing the quantum of compensation amount payable to the claimants under Section 166 of Motor Vehicles Act. It being so, the tribunal while passing the impugned award wrongly excluded 50% of the aforesaid amount of Rs.11,20,980/- from deduction on the pretext that family would have been entitled to pension to the extent of 50% of the last drawn pay. The said exclusion of 50% i.e. Rs.5,60,490/- was against the ratio of judgment in **Shashi Sharma's case (supra)** and **Birender's case (supra)**. Actually, the entire amount of Rs.11,20,980/- is to be deducted while computing the income of the deceased.

24. The accident took place on 2.6.2017 and award was passed in the year 2018 and thus the Tribunal rightly awarded compensation under the conventional heads and the same does not require any enhancement.

The claimants No.2 and 3 being children of the deceased are entitled to get parental consortium worth Rs.40,000/- in total in the light of the law laid down by Hon'ble Supreme Court in ***Magma General Insurance Company Vs. Nanu Ram @ Chuhru Ram & others 2018 (18) SCC 130,*** on account of loss of love and affection of their father.

25. In the light of the above, the total amount of compensation which the claimants are entitled to get is Rs.27,14,152/- (Rs.32,74,642-5,60,490). Apart from this claimants No.2 and 3 are also entitled to get parental consortium worth Rs.40,000/- in equal shares. To the aforesaid extent, the impugned award is modified/reduced. However, the rate of interest awarded by the Tribunal is maintained and the other conditions imposed by the tribunal while passing the impugned order are also kept intact.

26. The appeal filed by the Insurance Company is partly allowed while appeal filed by the claimants is disposed of in aforesaid terms.

(KARAMJIT SINGH)
JUDGE

30.11.2023
Gaurav Sorot/yogesh

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No