

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2382-2019 (O&M)
Date of Decision: May 08, 2024

National Insurance Company Ltd.
...Appellant

VERSUS

Lalit Kumar and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.D.R.Bansal, Advocate
for the appellant.

Mr.Ravinder Arora and Mr.Neeraj Khanna, Advocates
for respondents No.1 and 2.

Mr.Divyadeep Walia, Advocate
for respondents No.3 and 4.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-insurance company, insurer of offending vehicle bearing registration No.PB-07AS-9526, to assail the Award dated 02.01.2019 passed by learned Motor Accident Claims Tribunal, on account of death of Hazara Ram, in a motor vehicular accident, which took place on 09.05.2018.

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

That, on 09.05.2018, Hazara Ram and his wife Kiran Devi along with Lalit Kumar, at about 4.00 p.m., were proceeding from village Bahadurgarh to village Chandesar, P.S. Anandpur Sahib, District Ropar. Hazara Ram

along with wife Kiran Devi was going on motorcycle bearing registration No.PB-11V-3965, which was driven by Hazara Ram. However, their son Lalit Kumar was following them on Activa, bearing registration No.PB-11BU-7653. At about 5.00 p.m., when they reached near Multani Dhabha, a truck bearing registration No.PB-07AS-9526, being driven by its driver Iqbal Mohammad, in a rash and negligent manner and without blowing horn, came from behind and after crossing vehicle of Lalit Kumar and when reached near the motorcycle of Hazara Ram, the driver took a sudden cut, in rash and negligent manner and at a high speed and struck his truck, into the motorcycle of Hazara Ram. As a result of the same, Hazara Ram along with his wife Kiran Devi fell down from the motorcycle and rear tyre of the truck, ran over them and both Hazara Ram and Kiran Devi died instantaneously.

The accident was witnessed by Lalit Kumar and on his statement, FIR bearing No.53 dated 10.05.2018 under Sections 279, 427 and 304-A IPC was registered at Police Station Sirhind, Mohali, against respondent-Iqbal Mohammad. It is categoric claim that the accident had taken place, due to rash and negligent driving of respondent-Iqbal Mohammad.

In reply, respondents-owner and driver, had denied about taking place of the accident and involvement of the offending truck. In fact, it was pleaded that a false FIR was got registered.

Likewise, the insurance company, in its separate reply, besides taking preliminary objections, with regard to maintainability of the petition as well as violation of terms and conditions of the insurance policy, by the owner of the offending vehicle, also asserted that respondent-Iqbal Mohammad was not possessing legal and valid driving licence and the offending vehicle was

also being driven, without valid documents, i.e. RC and route permit. In fact, it also denied about the accident and made a prayer for dismissal of the claim petition.

On appraisal of the evidence, brought on record, vide impugned Award, it was concluded that accident had taken place, due to rash and negligent driving of the truck bearing registration No.PB-07AS-9526 and the same caused death of Hazara Ram. Thereupon, considering the vocation followed by deceased Hazara Ram, on the basis of salary record proved by PW-2 Amarjit Singh, official from Federal Mogul Goetze India Limited, Bahadurgarh, Patiala, the compensation was worked upon to the extent of Rs.38,52,456/- and the same was awarded to both the appellants-claimants, who are sons of deceased.

Feeling aggrieved by the impugned Award, the National Insurance Company Limited has filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel making appearance on behalf of the insurance company submits that no satisfactory evidence was brought on record to prove the rashness and negligence, imputed upon Iqbal Mohammad, while driving the offending vehicle, which caused death of Hazara Ram. The fact of accident, as such, would not stand established. Besides the aforesaid, it is submitted that learned Tribunal had erroneously considered the earnings of the deceased as Rs.43,876/-, on the basis of salary for the month of April 2018. In fact, learned counsel for the insurance company submitted that various allowances, as per the salary certificate, coming forth, have been taken into consideration. These allowances,

however, should not be included in the income of the deceased. Considering the same, it is submitted that the compensation, so worked upon, is on higher side, which calls for reduction, in any case.

On the contrary, learned counsel for respondents No.1 and 2, resisted the claim of the insurance company. In fact, it is submitted that the factum and manner of taking place of the accident, as well as rashness and negligence, as imputed upon respondent-Iqbal Mohammad, driver of the offending truck, stands established and this aspect calls for no further intervention by this Court. With regard to vocation followed by the deceased, also it is submitted that it stands established that the deceased was working as Technician in Federal Mogul Goetze Limited and salary slips of various months of 2018 have been proved on record and those slips amply establish about the earnings of the deceased. In fact, it is submitted by learned Tribunal had rightly placed reliance upon Ex.P15, which is pay slip for the month of April 2018, which relates to the preceding month of taking place of death of Hazara Ram. It is further submitted that the compensation granted, on the basis thereof, calls for no further intervention.

So far as, the factum and manner of accident is concerned, suffice to consider the testimony of Lalit Kumar, son of the deceased, who has stepped into witness box as PW-1. He has categorically stated he was accompanying the deceased, though, on separate vehicle, at the time of accident and he had seen the accident. Soon after the accident, he had also got recorded the FIR, wherein, he had stated about the manner of taking place of the accident, at the instance of Iqbal Mohammad, while driving the offending truck. He has categorically imputed rashness and negligence, in

the FIR, which is Ex.P1, which also stands corroborated by clear and specific testimony of Lalit Kumar, which is in the form of affidavit Ex.PW1/A. This witness was cross-examined at length by the respondents, but nothing material, elicited out, to dislodge the pleaded manner of taking place of the accident, on account of rash and negligent driving of the truck by Iqbal Mohammad. Even, the post-mortem report and death certificate etc. have also been duly proved as Ex.P3 and Ex.P4.

Moreover, it is also pertinent to mention that Iqbal Mohammad, in the capacity of being driver of the offending vehicle, was the most important person, who could explain about non-involvement of the vehicle in question, in the accident, as pleaded in the written statement and if so, about there to be any rashness or negligence, on his part. However, said Iqbal Mohammad had chosen to remain away from the witness box and precisely, on this account, adverse inference, ought to be drawn against him. Besides the same, there is no other evidence, brought on record, at the instance of the respondents-driver, owner and insurance company. Considering the evidence, brought on record, learned Tribunal had appropriately concluded about the accident to have taken place, on account of rash and negligent driving of the truck bearing No.PB-07AS-9526, driven by Iqbal Mohammad. Thus, the findings on issue No.1, are hereby affirmed.

Now, comes the question of quantum of compensation. So far as, age of the deceased is concerned, learned Tribunal had considered the age of the deceased to be 53 years. In this regard, suffice to make mention to the pay slips of the deceased, which amply establish his date of birth to be 20.05.1964. So calculating, on the date of accident i.e. 09.05.2018, the

deceased is established to be 53 years old. It is categorical claim of the claimants that deceased Hazara Ram was working as Technician with Federal Mogul Goetze Limited and he was earning Rs.60,000/- per month. Besides Lalit Kumar, son of the deceased, deposing to this effect, Amarjit Singh, official of Federal Mogul Goetze Limited has been examined as PW-2, who has categorically stated, as per the record brought by him that Hazara Ram was drawing salary of Rs.43,876/-, for the month of April 2018 and he has also brought and proved the appointment letter etc. and various salary slips, which are Ex.P11 to Ex.P21. Form No.16 TDS form Ex.P22 has also been proved, which relates to the period 01.04.2017 to 31.03.2018 (Assessment year 2018-19), which depicts total income of the deceased to be Rs.4,12,107.45 and after making assessment, there was no tax due towards him. Hazara Ram died in the month of May 2018.

Learned Tribunal had considered pay slip for the month of April 2018, where, the total salary was taken as Rs.43,876/- and since, the annual income was falling in the taxable range and considering the rate of tax, as varying figure, deduction was assessed as 10%, towards the income tax. Taking it to be so, the earnings were taken as Rs.39,489/- per month. Upon this, addition on the count of 'future prospects', to the extent of 10%, as per ***Pranay Sethi's case***, which was to the extent of Rs.3948/-, was made on the total income, so worked upon as Rs.43,437/- per month. Considering the same, 1/3rd was deducted on the count of 'personal expenses', which was to the extent of Rs.14,479/- and the residue amount, to be considered for loss of dependency, was worked upon as Rs.28,958/- and annual dependency was

worked upon as Rs.3,47,496/-. To this amount, multiplier of '11' was applied and by application of aforesaid multiplier, the compensation was worked upon as Rs.38,22,456/-. Besides the aforesaid, an amount of Rs.15,000/- was granted on each count of 'loss of estate' and 'funeral expenses'. Thus, the total compensation was worked upon as Rs.38,52,456/-.

Looking at this manner of the compensation worked upon by learned Tribunal, learned counsel for the insurance company has assiduously submitted that the allowances, ought not to be taken into consideration, as a whole and therefore, the allowances ought to be deducted from the earnings of the deceased. However, the aforesaid submission is not tenable, in view of the Constitution Bench decision rendered by the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, wherein, it was held that 'income' means actual income, less tax paid. Thus, it is the tax component, which is to be taken into consideration. In the given circumstances, no deduction, on account of allowances, as such, is required to be made.

But anyhow, the compensation, as worked upon by learned Tribunal, do call for intervention by this Court.

To begin with, it is pertinent to mention that various pay slips for the months of January 2018 to April 2018 i.e. soon before the death of deceased, have been proved on record as Ex.P12 to Ex.P15. Besides the same, even the pay slip of May 2018, has been proved as Ex.P16. Hazara Ram died on 09.05.2018. However, close perusal of the pay slips of the deceased reveals that some amounts varied from month to month, on account of the evening shifts, as well as hazardous days, on which the

deceased had worked. Considering the duration, as such, coming forth, in the said month pay slips, in the modest estimate, proximate to near reality, the earnings of the deceased, are now taken as Rs.39,350/- per month, annual whereof comes to be Rs.4,72,200/-.

The aforesaid amount of earnings of the deceased, do fall within the taxable bracket, as per income tax slab, prevalent at the relevant time. As per income tax slab, existing at the relevant time, the tax free income was to the extent of Rs.2,50,000/-. In the next income bracket i.e. from 2,50,000-5,00,000/-, the tax payable was 5%. It is in this category, at the maximum, the earnings of the deceased would fall. Taking his annual earnings to be Rs.4,72,200/-, Rs.2,50,000/- is to be deducted as tax free income and after deducting this amount, the residue taxable income comes to be Rs.2,22,200/-. Upon this 5% tax is payable, which is to the extent of Rs.11,110/-. Thus, after deducting this amount of tax from the total earnings, the residue annual earnings comes to be Rs.4,72,200-11,110=Rs.4,61,090/-.

Considering the age of the deceased, as per ***Pranay Sethi's case (supra)***, addition of 10% ought to be made, on the count of 'future prospects'. Making it to be so, the income of the deceased is worked upon as Rs.461090+Rs.46109(10%)=Rs.5,71,199/-.

Out the aforesaid amount, considering both the claimants to be dependent upon the deceased, 1/3rd is to be deducted, as done by learned Tribunal, on the count of 'personal expenses' as per ***Sarla Verma's case***. Thus, making this deduction, the annual loss of dependency comes to be

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

Rs.5,71,199-1,69,066=Rs.3,38,133/-.

Considering the age of the deceased, as per *Sarla Verma’s case*, appropriate and suitable multiplier, to be applied is ‘11’ as applied by learned Tribunal and while applying the same, the loss of dependency, works out to be Rs.338133x11=**Rs.37,19,463/-**.

Besides the aforesaid, under the conventional heads, as per *Pranay Sethi’s (supra)*, the compensation ought to be paid, on the count of ‘loss of consortium’, ‘loss of estate’ and ‘funeral expenses’. As per *‘Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130’*, whosoever are the dependents of the deceased/claimants, are entitled to ‘parental’, ‘spousal’ or ‘filial’ consortium, as required.

As per *Pranay Sethi’s case (supra)*, the compensation payable, with enhancement clause of 10%, after every three years of passing of the judgment, on the count of ‘loss of consortium’ is to the extent of **Rs.48,400/-**, to each of the claimants (i.e. Rs.48400x2=Rs.96,800/-) and on the similar pattern, on the counts of ‘loss of estate’ and ‘funeral expenses’, the compensation payable, comes to be **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to claimants, on account of death of Hazara Ram, is re-computed, as herein given:-

Loss of dependency	:	Rs.37,19,463/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.38,52,563/-

Keeping in view the aforesaid work upon, the compensation of

Rs.38,52,456/- as granted by learned Tribunal, is slightly less and as such, it does not call for any intervention in the extent of compensation already granted. Even the interest component, as granted by learned Tribunal, is just and reasonable.

In the light of the aforesaid observations, the impugned Award brooks no interference. Hence, the present appeal is hereby dismissed.

May 08, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No