**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. FAO-4396-2019 (O&M)

Reliance General Insurance Company Ltd.

…Appellant

Versus

Neelam Rani and others

…Respondents

2. FAO-3043-2021 (O&M)
Pronounced on: 20.03.2024

Neelam Rani and others

…Appellants

Versus

Khosla Machines Pvt. Ltd. and others

…Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Subhash Goyal, Advocate with
Mr. Vipul Sharma, Advocate
for the appellant (in FAO-4396-2019) and
for respondent No.2 (in FAO-3043-2021).

Mr. Ajay Kumar, Advocate for
Mr. Rajesh Verma, Advocate
for the appellants (in FAO-3043-2021) and
for respondents No.1 to 3/claimants (in FAO-4396-2019).

Mr. D. K. Dogra, Advocate
for respondent No.1 (in FAO-3043-2021) and
for respondent No.4 (in FAO-4396-2019).

Mr. Amit Kundra, Advocate for
Mr. Ashwani Arora, Advocate
for respondent No.5 (ii) in FAO-4396-2019.

****

RITU TAGORE, J.

1. This common judgment shall dispose of above-captioned appeals, arising out of the same award dated 30.03.2019 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal'), in a MACT Case No.209 of 2016, titled as 'Smt. Neelam Rani and others Vs. Khosla Machines Pvt. Ltd. and others'.

2. For convenience, parties are referred to as per their status before the learned Tribunal.

3. The Insurance Company is seeking reduction and claimants are seeking enhancement in the awarded amount. Learned counsel for the parties have agreed and consented to hear and decide the appeals together.

4. Relevant facts for adjudication of these appeals are as under:

> On 27.03.2016 at about 3:15 am, after attending *Ladies Sangeet* ceremony of his friend-Sandeep, deceased Vipin Kumar @ Lucky alongwith his friends was travelling in a car bearing registration No.CH03J-0377 (the offending vehicle) driven by Surinder @ Chhinda (since deceased). Vipin Kumar @ Lucky, deceased was sitting on the front seat of the car. It is alleged that due to high speed of the car, the driver lost control of the vehicle and struck against the signal pole of light point near Kali Bari, Sector 31/47 road within area of Police Station Sector 31, Chandigarh. As a result, car overturned and occupants of the car sustained injuries. Deceased- Vipin Kumar @ Lucky succumbed to the injuries.

5. Regarding the accident, FIR bearing No.72, dated

28.02.2016 under Sections 279/337, 304-A of IPC was registered at Police Station Sector 31, Chandigarh.

6. According to claimants (parents and unmarried sister), deceased Vipin Kumar @ Lucky, was aged about 21 years at the time of his death. He was matriculate and had done course of Web-Designing from New Delhi and was earning Rs.20,000/- per month by doing private jobs/ assignment from various IT companies and was also offered a job by Media Foster, A-87, Sector 4 Noida Branch (UP) vide contract letter dated 10.01.2016 for a salary of Rs.25,000/- p.m. Apart from that, deceased was also imparting tuition of basic computer skills to students and was earning Rs.10,000/- p.m. He was also earning Rs.10,000 p.m. by doing repair of mobile phones and computers. It is claimed that income of the deceased from all the sources was about Rs.40,000/- p.m.

7. The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.50 lacs along with interest @ 18% per annum from the date of accident till realization.

8. Respondents (owner, Insurance Company, LRs of deceased-driver, car dealer and subsequent purchaser) filed their respective replies. Respondents No.1, 3 and 4, pleaded their no concern with the offending vehicle. Respondent No.1 pleaded that he had sold the offending vehicle to Vineet Gupta and handed over the possession of the vehicle in question along with all documents vide delivery letter dated 30.01.2016. It is also stated that vehicle in question was fully insured with respondent No.2. LRs of respondent No.5 pleaded that vehicle in question was being driven by deceased-Vipin @ Lucky in a rash and negligent manner and the deceased (respondent No.5) was wrongly impleaded as a driver of the car (offending vehicle).

9. Respondent No.2, the insurer, pleaded that driver possessed no valid and effective driving license at the time of accident as such vehicle was being driven in violation of the terms and conditions of the policy. On the above material grounds, a prayer was made to dismiss the petition being meritless.

10. From the pleadings of the parties following issues were framed by the Tribunal:-

> *"1. Whether accident resulting into death of Vipin Kumar @ Lucky s/o Sh.Shiv Kumar took place due to rash and negligent driving of offending car bearing registration No.CH-03-J- 0377 make Honda Accord by respondent No.5 Surinder @ Chhinda, since deceased? OPP*
>
> *2. Whether claimants are entitled to compensation for death of Vipin Kumar @ Lucky s/o Sh.Shiv Kumar due to the accident in question, if so, to what extent and from whom? OPP*
>
> *3. Whether respondent No.5 Surinder @ Chhinda on the date of accident was not holding valid and effective driving license and, therefore, the offending car was being driven in violation of terms and conditions of the Insurance Policy, if so its effect? OPR*
>
> *4. Relief."*

11. The parties presented their respective evidence as detailed in the award. On the assessment of the evidence, learned Tribunal answered issue No.1 in favour of claimants, observing that deceased-Vipin Kumar @ Lucky died in accident caused by respondent No.1 while driving the offending vehicle in a rash and negligent manner. On issue No.2, learned Tribunal in absence of reliable evidence regarding

the technical education qualification of the deceased and his claimed income, treated him as a casual worker and determined his income at Rs.8458/- per month on the basis of minimum wages, considering the letter dated 17.05.2016 issued by Assistant Labour Commissioner, UT, Chandigarh. By taking the deceased as self- employed and his age 21 years, added 40% on his income towards future prospects and deducted 1/3rd towards his personal expenses, and assessed total loss of compensation Rs.17,05,140/-. Also, granted Rs.70,000/- compensation to the claimants under different conventional heads. Interest 9% p.a was also granted on the assessed amount from the date of filing of the petition till realization, and made respondents No.1 and 2 (registered owner and Insurance Company) jointly and severally liable to pay the compensation amount by exonerating the other respondents from their liability. Issue No.3 was answered against the Insurance Company and petition was allowed in the above terms while answering issue No.4 (relief) in favour of the claimants.

12. Learned counsel for the Insurance Company submitted that the learned Tribunal erred in taking minimum wages Rs.8,458/- per month relying upon a letter issued by Assistant Labour Commissioner, Union Territory, Chandigarh; whereas deceased was resident of Punjab (SAS Nagar, Mohali). Minimum wages as applicable to State of Punjab should have been taken. The prevalent minimum wages for the State of Punjab for the year 2016 were Rs.7,210/- pm for an unskilled worker.

13. Learned counsel for the Insurance Company further urged that the learned Tribunal faulted in considering three persons as dependents of deceased, despite the fact that deceased was a bachelor and his father (claimant No.2) was working in a security agency. This

fact was admitted by Neelam Rani (PW-1) the mother of the deceased. The learned counsel contended that in presence of father, an unmarried sister cannot be taken as dependent of deceased. Similarly, father cannot be treated as dependent of deceased. It is stated that as per normal rule one half (1/2) is to be deducted from the income of a bachelor deceased towards his self maintenance and personal expenses . The deduction of 1/3rd made by the learned Tribunal is against the principles culled out in ***National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680***. It is also stated that grant of compensation under the head of consortium is also flawed as deceased was an unmarried individual. The grant of interest at @ 9% has also been assailed being excessive. A prayer is therefore made to re-determine the compensation amount.

14. On the other hand, learned counsel for the claimants submitted that learned Tribunal misdirected itself in ignoring the contractual letter Ex.P-4 tendered on record and further same was not in dispute by the respondents. It is also submitted that learned Tribunal wrongly treated the deceased as a casual worker, whereas he was a skilled person, having technical qualifications. His income should have been taken at par with the skilled person. It is thus, stated that the compensation needs to be re-assessed accordingly.

15. I have heard learned counsel for the parties and have gone through the record with their valuable assistance.

16. There is no dispute regarding the death of deceased-Vipin Kumar @ Lucky in a motor vehicular accident in question, caused by Surinder @ Chhinda, since deceased (respondent No.5) while driving the offending vehicle in a rash and negligent manner. No appeal or cross-

objections have been filed by the LRs of deceased Surinder @ Chhinda-driver.

17. There is further no dispute regarding the age of the deceased 21 years (date of birth 08.08.1995 as recorded in birth certificate, Annexure P-8) and that he was unmarried at the time of his death.

18. Claimants pleaded that deceased was a skilled person. He was a web designer and had also gained technical knowledge of repairing mobiles and computers and used to give tuition to students regarding basic computer skills. To substantiate their version, claimant have relied upon a contract letter dated 10.01.2016 (Ex.P-4) to show that deceased was given a job offer by a company 'Media Foster', Noida Branch (UP) for a salary of Rs.25,000/- per month . The learned Tribunal rejected the version of the claimants with respect to the claimed income of the deceased and also discarded the letter (Ex.P-4), concluding that same was not duly proved by examining any official of the company or leading any other evidence to establish the projected income of the deceased.

19. Learned Tribunal further observed that claimants presented no evidence on the educational or technical qualification except adducing matriculation certificate (Ex.P-3) and self serving statement of the mother (PW1) of the deceased to show that deceased was earning Rs.20,000/- per month by doing private assignments of IT companies and Rs 20,000 from repair of mobiles and computers, and had earning Rs.40,000/- per month from all the sources.. The learned counsel for the claimants failed to point out that any error in the inferences and conclusions drawn by the learned Tribunal based on evidence on the

aforesaid issue. The learned counsel also failed to point out any evidence was missed out or misread by the learned Tribunal while reaching at a finding that deceased was matriculate only and did not have the claimed technical educational or qualification in web designing or computer and mobile repairing. The claimants thus, failed to show that deceased was a skilled person. The learned Tribunal has rightly considered the deceased as a casual worker.

20. Learned Tribunal relied upon letter dated 17.05.2016 issued by Assistant Labour Commissioner, UT, Chandigarh fixing Minimum wages, for UT, Chandigarh, to consider the income of the deceased on the scale of minimum wages. The grouse of the Insurance Company is that minimum wages as prevalent in State of Punjab should have been applied since deceased belonged to State of Punjab, SAS Nagar (Mohali). According to the counsel for the Insurance Company, minimum wages for a casual worker in State of Punjab for the year 2008 to 2016 were Rs.7,210.52/- p.m. and same should have been applied. To my considered opinion, adoption of letter of the Assistant Labour Commissioner, UT, Chandigarh by the learned Tribunal, for a resident of SAS Mohali, is not an error. It is common knowledge that three cities namely Mohali, Panchkula and Chandigarh are closely located with each other and are known as 'Tricity'. The minimum wages as prevalent for Chandigarh can be considered for a resident of Mohali being a part of a Tricity. Therefore, adoption of a minimum wage at Rs.8,458/-p.m as income of the deceased by the learned Tribunal is justified and is not disturbed, same is taken as such.

21. The learned Tribunal made deduction of $1/3^{rd}$ in the income of the deceased towards his personal expenses, by treating all the

claimants as dependents on the deceased. It is admitted case that deceased was a bachelor. Claimant-Neelam Rani (PW-1) admitted that her husband claimant No.2 was working in a security agency. In view thereof, father and unmarried sister during the lifetime of her father cannot be treated as dependents of deceased. Only mother as claimant can be treated as dependant. In ***National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680*** it is held that in a case of a bachelor, only mother can be taken as dependent upon the deceased unless contrary evidence is led on record to establish that other claimants are also dependents on the bachelor deceased. Normally, in case of a bachelor deduction towards personal expenses is required to be taken at 50% of his establish income. In present case, claimants led no evidence to establish that father and unmarried sister were dependent on the deceased.

22. In view of the evidences on record, it is held that learned Tribunal committed mistake in deducting $1/3^{rd}$ towards personal expenses of the deceased by taking all the claimants as dependents upon him by ignoring the admission of claimant-Neelam Rani (PW-1) that her husband is an earning hand. The calculation, in given circumstances, needs to be revised being against factual and legal position. The compensation is re-determined as under:-

Name of the deceased –Vipin Kumar @ Lucky Age – 21 years Status – Unmarried Amount given by learned MACT – Rs.17,75,140/- along with 9% interest per annum		
Reassessment of award amount		
Sr. No.	**Heads**	**Income (in Rupees)**

1.	Income	Rs.8,458/-
2.	Future prospects 40% in view of Pranay Sethi (supra)	Rs.8,458 x40/100=Rs.3383/- (Rs.8458 + Rs.3383/-=11841)
3.	Deduction ½ on self maintenance of deceased	Rs.11,841/2=Rs.5920.5/- rounded at Rs.5921/-
4.	Multiplier	18
5.	Total loss of dependency	Rs.5920x12x8=Rs.1278936/-
6.	Loss of estate (10% increase in every three years in view of Pranay Sethi (supra)	Rs.18,000/-
7.	Loss of funeral expenses (10% increase in every three years in view of Pranay Sethi (supra)	Rs.18,000/-
8.	Loss of filial consortium x 48,000 3claimants (10% increase in every three years in view of Pranay Sethi (supra)	Rs.1,44,000/-
9.	Total	Rs.14,58,936 /-

23. Accordingly, amount of compensation Rs.17,75,140/- awarded by the learned Tribunal, is reduced to Rs.14,58,936/- alongwith interest as awarded by the Tribunal, is payable to mother-claimant. Keeping in view rate of interest as prevalent, grant of interest by the Tribunal does not seem to be on higher side. Out of the assessed amount, Rs.48,000/- each shall be payable to claimants No.2 and 3.

24. In view of the aforesaid discussion, appeal of Insurance Company bearing No.FAO-4396 of 2019 is allowed and that of claimants bearing No.FAO-3043 of 2021 is dismissed.

25. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on:20.03.2024
Rimpal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

RIMPAL RANI
2024.03.21 18:16
I attest to the accuracy and authenticity of this order/judgment