In the High Court of Punjab and Haryana at Chandigarh

FAO No.4714 of 2019(O&M)
Date of Decision: 23.08.2024

United India Insurance Co. Ltd. .....Appellant

Versus

Rizwana and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Amit Kundra, Advocate for the appellant/Insurance Company.

Mr. Ashish Gupta, Advocate for respondents No.1 to 5.

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RITU TAGORE, J.

1. This appeal is directed against the award dated 25.03.2019, passed by the learned Motor Accident Claims Tribunal, Karnal (in short 'the Tribunal'), whereby a sum of Rs.34,30,000/- along with interest @ 7% per annum from the date of filing of the claim petition till realization, was awarded to the legal representatives of deceased – Mahtab.

2. The relevant facts for adjudication of this appeal are that, on 14.06.2018, deceased Mahtab, aged 25½ years, a driver by profession, was driving Eicher Canter bearing registration No.HR-55J-7236 from Hissar to Delhi. At about 3:00 A.M., when he reached near Takshila School on Rohtak - Delhi road bye-pass, the offending vehicle i.e. Truck bearing registration No.HR-69C-9835, going ahead of the Canter, without giving any indicator or signal, suddenly applied the brakes. As a result, the Canter struck the rear side of Truck, causing grievous and serious injuries to the

driver (Mahtab), who succumbed to his injuries on the spot.

3. The legal representatives i.e., parents and unmarried sisters of deceased – Mahtab, filed the petition for grant of compensation to the tune of Rs.50 Lakhs, pleading their dependency on the deceased, the loss of their source of livelihood as well as the loss of love and affection from the deceased.

4. First Information Report No.352 dated 14.06.2018, under Sections 279, 283, 304-A and 427 of the Indian Penal Code (in short 'IPC'), at Police Station Shivaji Colony, Rohtak, was lodged by Furkan, the brother of the deceased, who was also an eye witness to the accident, against the driver - Virender Gir/respondent No.1 (before the learned Tribunal) of the offending vehicle, for causing the accident and resultant death of the deceased – Mahtab.

5. Upon notice, the respondents (driver, owner and Insurance Company), appeared and filed their respective replies, wherein they denied the involvement of the offending vehicle (Truck) in the accident. Further, the claimants were asked to prove their entitlement to seek compensation and also their dependency upon the deceased – Mahtab as well as the age, occupation and income of the deceased.

6. From the pleadings of the parties, the learned Tribunal framed the following issues:-

> 1. Whether accident in question took place on 14.06.2018 near Takshila School, Rohtak, Delhi Bye-pass Road, Rohtak, on account of rash and negligent driving of truck No.HR69C-9835 on the part of respondent No.1, resulting into death of Mahtab?OPP.

2. If issue No.1 is proved whether the claimants are entitled to any compensation and if so how much and from whom? OPP

3. Whether the claim petition is not legally maintainable in the present form? OPR

4. Whether the claimants have got no locus standi and cause of action to file the petition? OPR

5. Whether respondent No.1 was not holding a valid and effective driving licence on the alleged date of accident? OPR(3).

6. Relief.

7. Thereafter, the parties led their evidence, as detailed in the judgment/Award. On appraisal of the evidence, learned Tribunal observed that deceased- Mahtab died in the accident in question, caused by respondent No.1/driver while driving the offending vehicle i.e., Truck bearing Registration No.HR69C-9835, in a rash and negligent manner. The learned Tribunal assessed the income of deceased @ Rs.13,000/- per month, after considering the endorsement on the driving licence Ex P-3 of the deceased, authorizing him to drive PSV/BUS and LMV/CAB, and treating him as a driver of a heavy vehicle. The learned Tribunal deducted 1/4th of his income towards personal expenses and living expenses of the deceased, considering dependency of five persons upon him. A multiplier of 18 was applied, and an addition of 40% to the income for future prospects was allowed, based on the age of the deceased being between 23 to 25 years. The learned Tribunal awarded a total compensation of Rs.34,28,400/- (rounded off to Rs.34,30,000/-) along with interest @ 7% per annum, which is detailed

hereunder:-

Monthly income of the deceased	Rs.13,000/-
Deduction for personal expenses	1/4th
Multiplier	18
Future prospects	40%
Loss of dependency	Rs.29,48,400/-
Loss of Filial consortium	Rs.2,00,000/-
Loss of love and affection	Rs.2,50,000/- (Rs.50,000/- each)
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-

The learned Tribunal also held all the respondents (driver, owner and insurance company) jointly and severally liable to pay compensation to the claimants.

8. Aggrieved by the grant of compensation, being on the higher side, the appellant/Insurance Company has preferred the present appeal.

9. Learned counsel for the appellant/Insurance Company argued that the learned Tribunal erred in making a deduction of 1/4 for the personal expenses of the deceased as the deceased was a bachelor at the time of accident and had both a brother (PW-2) and a father in the family. Under these circumstances, the claimants cannot be considered solely dependent on the deceased. The deduction should have been 1/2 instead of 1/4th as per the settled principles laid down in the judgment of '**Sarla Verma Vs. Delhi Transport Corporation', 2009(6) SCC 121** and followed in other judicial decisions.

10. Learned counsel for the appellant/Insurance Company further submits that learned Tribunal has wrongly taken the income of the deceased at Rs.13,000/- per month, whereas minimum wages, issued by the Labour Department, Haryana, during the relevant period, were Rs.10,000/- per month. The grant of compensation under the conventional heads is also contrary to the principles laid down in '**Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others' (2018) 18 SCC 130** and '**National Insurance Company Limited vs. Pranay Sethi and others' (2017) 16 SCC 680.**

11. Learned counsel for the appellant also argued that this was a case of contributory negligence given the undisputed fact that the deceased hit his Canter into the offending vehicle from behind. It was contended that hitting a vehicle from behind, unerringly goes to suggest that the driver of the trailing vehicle was solely at fault, or at least contributed to causing the accident. On these material grounds, it is stated that the award is bad in the eyes of law and evidence needs to be re-appreciated.

12. Contra, learned counsel for the claimants/respondents No.1 to 5, supported the findings of the Tribunal, stating that same have been rendered after due appraisal of the evidence. Learned counsel submits that from the evidence, it is proved that driver of the offending vehicle, faced trial for causing the accident by driving the offending vehicle rashly and negligently and in violation of traffic rules. Further, the respondents did not take the plea of any contributory negligence, therefore they cannot be permitted to take this plea for the first time in the appeal. It is stated that on cause of accident, the evidence has remained unrebutted on record. Therefore,

findings on the cause of accident are valid and appropriate. Learned counsel further submits that the learned Tribunal rightly determined the income of the deceased at Rs.13,000/- per month, considering the fact that he was duly licensed to drive both heavy and light transport vehicles. Further minimum wages is only a yardstick and not an absolute factor to be taken to determine the compensation under loss of income. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court in **Jakir Hussein Vs. Sabir and others, 2015(2) RCR (Civil) 141**.

13. Learned counsel further submits that although the deceased (Mahtab) was a bachelor, he had five dependents upon him. Therefore, the deduction of 1/4th of his income instead of 1/2, towards his personal expenses has rightly been made. In support of his contention, he has referred to **Magma General Insurance Company Limited's** case (supra), wherein considering the dependency of old father and unmarried sisters upon the deceased 1/3rd deduction was made on the self expenses of a bachelor deceased. It is urged that grant of compensation under conventional heads is also appropriately assessed by the learned Tribunal. With these submissions, a prayer is made to dismiss the appeal.

14. I have heard learned counsel for the parties, perused the paper-book and the record with their able assistance.

15. So far as the observation of the learned Tribunal, holding respondent No.1/driver of the offending vehicle, solely responsible for causing the accident is concerned, same is based on sound appreciation of evidence on record. Undisputedly, deceased was following the offending truck, when suddenly respondent No.1/driver of the offending truck applied

the brakes, and the Canter driven by the deceased (Mahtab) struck into the offending vehicle from behind, resulting in the accident and sustaining the fatal injuries to deceased. Hitting of a vehicle from behind, normally raises a presumption of negligence on the part of the driver of trailing vehicle. Nonetheless, such a presumption is rebuttable and is fact specific in each case. Furkan (PW-2), the brother of deceased, who witnessed the accident and also lodged the FIR, stated in many words that he was following his deceased brother in a car, who was driving the Canter at a moderate speed by observing traffic rules, when driver of the offending vehicle i.e., Truck, without giving prior indicator, suddenly applied the brakes that led to the accident. His said statement remained unrebutted and also received support from the copy of final report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') Ex.P-1 indicating that the Police registered FIR No.352 dated 14.06.2018, under Sections 279, 283, 304-A and 427 IPC against the respondent No.1/driver of the offending vehicle for causing the accident. Further, neither the driver, nor owner or any witness of Insurance Company, appeared to rebut the version of the claimants or statement of Furkan (PW-2). In these circumstances, it is held that inferences and conclusions drawn by the learned Tribunal are accurate, as they are based on evidence and require no interference.

16. Insofar as determination of income of the deceased at Rs.13,000/- per month by the learned Tribunal, is concerned, same does not require any reduction, for the reasons that it is proved on record that deceased was a driver and his driving licence Ex.P-3, indicates that he was authorized to drive Transport vehicle i.e., PSV/Bus/LMV. The learned

Tribunal assessed the income of deceased at Rs.13,000/- per month considering the Deputy Commissioner (DC) rates which were between Rs.14,330/- to Rs.15,815/-, during the relevant period, and the cost of high living. Learned counsel submits that the learned Tribunal despite placing reliance upon judgment of this Court in **FAO No.2426 of 2018 titled 'The New India Assurance Company Limited Vs. Ms. Sheela Devi and others', decided on 04.05.2018**, and observing that minimum wages should be relied upon, considered the DC rates and thereby committed serious illegality. Learned counsel for the appellant-Insurance Company contends that minimum wage for a driver of Light Motor Vehicle, prevalent at the time of accident, was Rs.10,328/- per month and for heavy vehicle Rs.10,845/- per month, therefore, the income should not have been considered beyond Rs.11,000/- per month.

17. In **Jakir Hussein's** case (supra), it is observed that minimum wages is only a yardstick and not an absolute factor to be taken to determine the compensation and sometimes minimum wages may fail to meet the requirements that are needed to maintain the basic quality of life. Further, in '**Kirti and another Vs. Oriental Insurance Company Ltd.', 2021 (2) SCC 166**, Hon'ble the Supreme Court held that Court can take income beyond minimum wages, where deceased appears to be maintaining a good standard of life. Furkan (PW-2), brother of deceased, stated that he was following the deceased in a car before the accident. From the statement of Furkan (PW-2), brother of deceased, it appears that family of the deceased is maintaining a car. Keeping in view the above facts and the high cost of living, the determination of income at Rs.13,000/- per month, cannot be

taken on the higher side. Therefore, does not require any interference.

18. With respect to issue of deduction from the income of the deceased, in case of bachelor, towards personal expenses, a normal rule provides for half cut in his total per month income. However, in para No.32 in **Sarla Verma's case** (supra), it is held that where family of a bachelor is big and dependents are large, who are non earning, his personal and living expenses may be restricted to 1/3, as contributions to the family can be taken as two-third.

19. It is undisputed that deceased was a bachelor. Mohd. Ilyas, father of deceased appeared in the witness box as PW-1 and recorded his age as 59. A suggestion was given to him that he was taking government pension which he denied. No suggestion was given to him that he was working. The brother of deceased, Furkan appeared in the witness box as PW-2 and stated that he is Carpenter by profession. This shows that deceased was not the only earning member in the family. His brother was also earning. In such circumstances, the primary and sole responsibility of maintenance of claimants cannot be taken upon the deceased alone. In somewhat similar facts in **Magma General Insurance Company Limited's** case (supra), the deduction of 1/3rd income was made on personal expenses of the deceased. In these facts and circumstances, the deduction of 1/4th income of deceased on his self expenses and maintenance, by the learned Tribunal, is faulty and liable to be rectified, following the principles laid down in **Sarla Verma's** case (supra), **Pranay Sethi and others' and Magma (supra)**. Hence, the deduction in income for personal expenses should be 1/3rd. The grant of compensation under conventional heads need to be made in consonance with

the principles laid down in **Pranay Sethi and others'** case (supra). However, selection of multiplier at 18 and grant of addition in income @ 40% towards future prospects by determining the age of deceased between 23 – 25 years, are not in dispute and are affirmed.

20. In view of the aforesaid discussion, the award passed by the Tribunal is modified and the amount of compensation is re-determined hereinbelow:-

Sr. No.	**Heads**	**Amount**
1.	Monthly Income	Rs.13,000/-
2.	Future prospects @ 40% (Rs.13,000/- + Rs.5200/-)	Rs.18,200/-
3.	Deduction of 1/3 income for personal expenses (Rs.18,200/- - Rs.6,066)	Rs.12,134/-
4.	Total Annual Income (Rs.12,134/- x 12)	Rs.1,45,608/-
5.	Loss of dependency after applying multiplier of 18 (Rs.1,45,608/- x 18)	Rs.26,20,944/-
6.	Loss of consortium (filial) (48,000/- x 5)	Rs.2,40,000/-
7.	Funeral expenses	Rs.18,000/-
8.	Loss of estate	Rs.18,000/-
9.	Total Compensation	Rs.28,96,944/-
10.	Amount awarded by the Tribunal	Rs.34,30,000/-
11.	**Reduced amount of compensation**	**Rs.5,33,056/-**

21. Claimants are entitled to a total compensation of Rs.28,96,944/- on account of death of deceased - Mahtab. Accordingly, compensation is reduced to the extent of Rs.5,33,056/- (Rs.34,30,000/- awarded by the Tribunal – Rs.28,96,944/- as assessed above). Award is accordingly

modified. However, the grant of interest on the above assessed amount and other direction as to the disbursement of amount to the claimants as per the ratio given by the Tribunal are not disturbed/altered.

22. The Insurance Company shall be entitled to recover the excess amount, if already paid/deposited, by filing an appropriate application before the Tribunal.

23. No other point was addressed or raised.

24. The appeal stands partly allowed in the aforesaid terms. No order as to costs.

25. Pending miscellaneous application(s), if any, is/are disposed of accordingly.

AUGUST 23, 2024 **(RITU TAGORE)**
d.gulati **JUDGE**

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