

IN THE HIGH COURT OF PUNJAB A ND HARYANA AT CHANDIGARH

106

FAO-2408-2014 (O&M)
Date of Decision : 11.12.2024

Gulistan and Others

....Appellants

VERSUS

Vashuki Nath Shukla and Others

....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Maneet Kaushik, Advocate for
 Mr. Ashit Malik, Advocate for the appellants.

 Mr. Pradeep Kumar, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the claimants challenging the award dated 01.02.2014 passed by the Motor Accident Claims Tribunal, Yamunanagar (hereinafter referred to as the ‘Tribunal’) seeking enhancement of compensation as also on the ground that at the first instance respondent No.3-Insurance Company would be liable to pay the amount of compensation awarded by the Tribunal.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.
3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income	Rs.5,000/-
2	Annual income	[Rs.5,000 x 12] = Rs.60,000/-

3	Deduction – 1/4 th	[Rs.60,000 – 15,000] = Rs.45,000/-
4	Multiplier of 17	[Rs.45,000 x 17] = Rs.7,65,000/-
5	Funeral expenses	Rs.5,000/-
6	Loss of estate	Rs.5,000/-
7	Loss of consortium	Rs.10,000/-
	Total Compensation	Rs.7,85,000/-
	Interest	7.5% per annum

4. Learned counsel for the claimant-appellants has relied upon a judgment of the Hon’ble Supreme Court in the case of **IFFCO Tokio General Insurance Co. Ltd. vs. Geeta Devi & Ors. [2023(4) RCR (Civil) 854]** to contend that when a driver is driving the vehicle with a fake licence, the burden is on the Insurance Company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence before employing that person to drive the vehicle. Learned counsel for the claimant-appellants would further contend that no such plea was raised nor was it proved before the Tribunal that the owner of the vehicle had not taken due precautions or had not carried out due diligence before employing the driver, who was driving with a fake licence. In the absence of the said plea, the law laid down in the case of **Geeta Devi (supra)**, would apply on all fours and the Insurance Company would be liable to pay the amount of compensation as awarded by the Tribunal.

5. Learned counsel for the claimant-appellants would further contend that though the Tribunal has rightly assessed the income of the deceased as Rs.5,000/- per month and also correctly applied a deduction of 1/4th and a multiplier of ‘17’, however, no addition has been made towards

loss of future prospects of the deceased. Further, the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are not in accordance with the law laid down by the Hon'ble Supreme Court. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130]** and **N. Jayasree & Ors. vs. Chola mandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

6. It was noticed in the order dated 04.08.2017 that service had been effected upon respondent Nos.1 and 2 by way of publication, however, despite the same none appeared on their behalf. Learned counsel for respondent No.3-Insurance Company is not in a position to dispute the law laid down by the Hon'ble Supreme Court in the case of **Geeta Devi (supra)**. He is also not in a position to dispute the fact that no plea was raised by them in the written statement regarding the driving licence being fake and the owner not having carried out due diligence before employing the driver, who possessed the fake licence.

7. Heard.

8. In the present case the onus to prove that the owner had not carried out due diligence before employing the driver was upon the Insurance Company as per the law laid down by the Hon'ble Supreme Court in the case of **Geeta Devi (supra)**. Having failed to do the needful the Insurance Company cannot escape the liability. In view thereof, the

Insurance Company would be liable to pay the amount of compensation as awarded by the Tribunal.

9. In the present case, income, deduction and multiplier have not been challenged by the claimant-appellants. The Tribunal while awarding the amount of compensation has not made any addition towards loss of future prospects. The deceased in the present case was 26 years of age and keeping in view his age, 40% addition would have to be made towards loss of future prospects in view of the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (*supra*). Further, the amounts awarded under the conventional heads and under the head ‘loss of consortium’ also need to be re-worked in view of the law laid down by the Hon’ble Supreme Court in the cases of **Pranay Sethi** (*supra*), **Magma General Insurance Company Limited** (*supra*) and **N. Jayasree** (*supra*) and hence the claimant-appellants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) under each head of loss of estate and funeral expenses. The claimant-appellants would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) each towards loss of consortium.

10. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5,000/-
2	Annual Income	[Rs.5,000 x 12] = Rs.60,000/-
3	Deduction – 1/4 th	[Rs.60,000 – 15,000] = Rs.45,000/-
4	Future Prospects - 40%	[Rs.45,000 + 18,000] = Rs.63,000/-
5	Multiplier – 17	[Rs.63,000 x 17] = Rs.10,71,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-

8	<u>Loss of consortium</u> (i) Spousal (ii) Parental (iii) Filial	Rs.48,000/- Rs.96,000/- [Rs.48,000 x 2] Rs.48,000/- Rs.1,92,000/-
	Total	Rs.12,99,000/-

11. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount. The enhanced amount of compensation shall be apportioned amongst the claimant-appellants as directed by the Tribunal.
12. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

11.12.2024
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO