IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3630-2015 (O&M)
Date of Decision: July 22, 2024

Oriental Insurance Company Limited

...Appellant

VERSUS

Rashmi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Talwar and Mr.Satpal Dhamija, Advocates for the appellant.

Mr.Ashwani Arora, Advocate for respondents No.1 to 5.

None for respondent No.6

****

ARCHANA PURI, J.

The Oriental Insurance Company Limited has filed the present appeal to assail the Award dated 04.02.2015 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation, on account of death of Anil Ralhan, in a motor vehicular accident, which took place on 06.08.2013.

For the convenience of discussion, the parties are referred to as making appearance before learned Tribunal.

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

That, on 06.08.2013, at about 7.50 p.m., Anil Ralhan, while riding his motorcycle bearing registration No.PB-02BR-1764, was going from his residence to the market for purchasing household goods, on correct side of the road. When he reached near the flats of Housefed, a car bearing registration No.PB-02BQ-Temp-9840, came from behind and overtook the aforesaid motorcycle, at a high speed, in rash and negligent manner and suddenly applied the brakes of his car, without any obstruction before him and as a result thereof, the motorcycle of Anil Ralhan, rammed into the said car from behind, though, he tried his level best to save the impact. Due to this accident, the deceased fell on the road and sustained severe injuries. He was shifted to Life Line Hospital, Amritsar, from where, he was referred to Escort Hospital and then again shifted to Hargun Hospital, where he died, after operation. The accident was witnessed by Satnam Singh @ Nita, who was coming behind the offending vehicle, in his car.

Further, it was asserted that Anil Ralhan was 48 years old, at the time of accident. He was self employed and earning Rs.35,000/- per month. As such, a prayer was made for grant of compensation, on account of death of Anil Ralhan.

In pursuance of the notice issued, respondents made appearance and filed their respective replies. Respondent No.1-owner and driver of the car, in his reply, had pleaded that though the accident had taken place, but it was only due to sole negligence of the deceased, who was driving the motorcycle in the negligent manner and therefore, he is not liable to pay any compensation to the claimants.

Likewise, the insurance company-respondent No.2 took various objections, with regard to respondent No.1, not having valid and effective driving licence and that no FIR was registered in the present case and merely

DDR was got recorded. As such, a prayer was made for dismissal of the claim petition.

On appraisal of the evidence, coming on record, learned Tribunal had concluded about the accident to have taken place, due to rash and negligent driving of car bearing registration No.PB-02BQ-Temp-9840, driven by respondent No.1-Varinder Pal Singh and granted compensation to the extent of Rs.33,15,122/-. The liability of owner-cum-driver and the insurance company was held to be joint and several.

Feeling aggrieved, the insurance company has filed the present appeal.

At the very outset, learned counsel for the insurance company has submitted that the factum of accident, as such, as pleaded by the claimants, does not stand established. Rather, considering the factual position, as submitted by the claimants, in the claim petition, do amply establish about the accident, if it had taken place, to be result of negligence, on the part of deceased Anil Ralhan, who had rammed his motorcycle into the offending car. Throughout the arguments, much emphasis has been laid upon DDR, which was registered, at the behest of brother of deceased, namely Vijay Kumar Ralhan, on 10.08.2013. It is submitted that the accident allegedly had taken place on 06.08.2013, but however, the DDR was registered on 10.08.2013, wherein, there is specific mention of the stray dog, having come before the car, upon which, the driver of the car applied the brakes suddenly, as a result of whereof, motorcycle driven by the deceased, had struck into the car. Rather, it is submitted that the accident, if at all, had evidently taken place, on account of stray dog having come in front of the car, suddenly. Also, further it is submitted that no safe distance was maintained by deceased Anil Ralhan, while driving his motorcycle. Even, Vijay Kumar Ralhan, brother of the deceased, who is the author of the DDR, has not been examined. In these circumstances, it is submitted that PW-2 Satnam Singh has been falsely alleged to be an eye witness to the accident in question. Furthermore, reference has also been made to the hospital record of Escort Hospital, wherein, the accident is mentioned to be an accidental fault. In the light of the same, it is submitted that there was no negligence, on the part of the driver of the car. In fact, at the maximum, it is a case of contributory negligence.

Besides the aforesaid, it is submitted that the earnings of the deceased have been taken on higher side and even, addition on the count of 'future prospects' is on higher side. Thus, it is submitted that the consequential work on of the compensation, is on higher side.

Undisputedly, the version set up by the claimants about the manner of taking place of the accident is that the offending car had overtaken the motorcycle, driven by deceased Anil Ralhan and the car was being driven at a high speed and in rash and negligent manner and all of a sudden, the driver of the car applied the brakes, as a result whereof, the motorcycle of deceased struck with the car and Anil Ralhan fell down and sustained severe injuries on his head, which proved fatal. To so substantiate this version, PW-2 Satnam Singh has been examined by the claimants. His affidavit is Ex.PW2/A. He has categorically deposed, in consonance with the pleaded case of the claimants.

Throughout, much emphasis has been laid upon FIR having not been registered, vis-a-vis, the accident in question and that only DDR has been lodged, which is Ex.PC. It is pointed out that the same was got recorded by brother of the deceased, on the fourth day of the accident and therein, it is specifically mentioned that the accident had taken place, all of a sudden, without fault of anyone.

However, registration of the FIR is not a pre-requisite, to decide the petition filed under Section 166 of the Motor Vehicle Act, while making assessment of the negligence, on the part of the driver of the alleged offending vehicle. In the given circumstances, the evidence adduced, has to be appraised independently. Very true, in the DDR Ex.PC got registered by brother of the deceased, it was stated that the accident was caused without any fault of any person. However, it should be noted that Satnam Singh has been examined as PW-2. This witness had categorically stated about himself to be an eye witness to the accident in question. Nothing material was elicited out, in his cross-examination, to controvert the version of the claimants. Not only this, even respondent-Varinder Pal Singh, had though admitted about the accident, but however, he has imputed negligence, on the part of deceased Anil Ralhan. He has not stepped into the witness box, to so substantiate his version, with regard to the manner of the accident. In the given circumstances, adverse inference, ought to be drawn against the owner-cum-driver of the offending vehicle in question.

Very true, as pointed out that there was striking of the motorcycle of the deceased on the backside of the offending vehicle. In this regard, it is assiduously submitted by learned counsel for the insurance company that the deceased, being occupant of the motorcycle, should have maintained safe distance and since, he had not maintained the safe distance, so he is responsible for the accident.

Learned counsel has relied upon Regulation No. 23 of the Regulations of 1989, which is reproduced as herein given:-

> *"23. Distance from Vehicles in front. - The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop."*

However, on this count, the submission made by learned counsel for the appellant, is without any substance. As observed aforesaid, respondent-Varinder Pal Singh, who was the best person to controvert the fact of accident and the manner of taking place of the same, has not bothered to step into the witness box.

No doubt, Regulation No.23 prescribes that the vehicle following should maintain the safe distance, but however, the same is only a road advice, to be observed by drivers, when driving on the roads; but the same can hardly be made a criteria, for assessing the compensation or determining the locus of liability, as such. The measure of '**safe distance**' has so many factors/ingredients, which ought to be taken into consideration and they ought to be proved for showing lack of safe distance. This term 'safe distance' cannot be used ipso facto, without the same being defined, anywhere in law. 'Safe distance' is a relative concept, which depends upon the differential speed of the vehicles, their brake systems, technical efficacy, the respective mass/weights of the vehicle concerned, the friction quotient provided by the road surface as well as the aptitude of the driver towards speed, besides the natural reflex response time of an individual human being and the quick action, taken by each driver, as per the requirement of situation. It is, considering all the aforesaid factors, the assessment of 'safe distance' as such, can be reckoned. Given the same, being a relative term, many a times, distance of even one feet, can be concluded to be 'safe distance', whereas, there may be occasions, where the appropriate distance between two vehicles, where the visibility is very less, then also, it cannot be said to be a 'safe distance'. Considering the same, without any evidence, brought on record, about all the aforesaid factors, it cannot be concluded that there was no 'safe distance', as a ground to avoid legal liability.

Adverting to the case in hand, it is pertinent to mention that though respondent-Varinder Pal Singh, who was driving the offending car, at the relevant time, in his reply, has admitted about the accident, but he has imputed negligence, on the part of the deceased. He had not substantiated the manner of the accident. May it be so, at least, he could have stepped into witness box, to substantiate this plea of negligence. However, he had not bothered to appear in the witness box and did not have the cheeks, to face cross-examination, at the behest of the claimants. In the given circumstances, when no such plea of contributory negligence, as such, had been raised by respondent-Varinder Pal Singh, in his reply and no evidence, has been led, even by the insurance company, qua the same, simply on the score of the vehicle having struck on the backside, as such, is not sufficient to conclude about contributory negligence.

At the same time, reference is required to be made to Regulation No.24 of the Regulations of 1989, which prescribes that the vehicle going ahead shall not apply sudden brakes, except for a sufficient reason. This regulation reads, as herein given:-

> *"24. Abrupt brake – No driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons."*

In the present case, it was required on the part of the driver of the offending car, to come forward and disclose about the manner of applying the brakes suddenly, but as observed aforesaid, he had chosen to remain away from the witness box. This has also not been substantiated in his reply. Even, the insurance company has not bothered to examine him, to elicit the alleged manner of taking place of the accident, as now submitted.

It should also be noticed that it is not uncommon to see the vehicles on the road, being driven neck-to-neck. If it be so, the applying of the brakes, all of a sudden, as asserted in the present case, the vehicle following may, on account of human error or quick response, bound to strike the vehicle from behind. Solely, on account of the occupant of motorcycle, having struck against the car and having sustained multiple injuries, which proved fatal, ipso facto, it cannot be concluded that he was negligent and not maintaining 'safe distance'. In fact, with the striking of the motorcycle with the car, as a result of sudden brakes applied by the vehicle going ahead, there are chances of the occupant of the two-wheeler having a fall and in this case, Anil Ralhan had suffered head injury, which without any further evidence, as per the submission now, at the behest of learned counsel for the appellant, cannot be held to be sufficient to conclude about contributory negligence, on the part of the deceased Anil Ralhan.

In these circumstances, the submissions made by learned counsel for the appellant, has no substance and the same is rejected. Thus, the findings recorded by learned Tribunal, on issue No.1 are hereby affirmed.

Faced with the aforesaid conclusion, much emphasis has also been laid upon the compensation having worked upon on higher side.

The claimants had asserted about the deceased to be running Fan manufacturing industry and repairs and also running a proprietory firm in the name of AVS Embroidery and he was having earnings Rs.35,000/-. Besides various other witnesses, PW-5 Bhawani Singh, Senior Tax Assistant, was also examined by the claimants, who had proved income tax returns, which are Ex.P8 to Ex.P11, for the years 2009-10 to 2012-13. As per income tax return 2012-13, which was the last return filed by the deceased, the annual income was disclosed as Rs.2,51,577/-. After bifurcation, the monthly earnings comes to be Rs.20,973.08, which was taken Rs.20,974/- in round figure.

Taking it to be so, considering the deceased to be in the age group of 40-50 years, addition of 30%, on the count of 'future prospects' was made and thus, the total income was assessed as Rs.27,266/- per month, the annual whereof was worked upon as Rs.3,27,192/-. Out of the same, 1/4th was deducted and the dependency of the claimants was worked upon as Rs.2,45,394/-. After applying the multiplier of '13', the loss of dependency was worked upon as Rs.31,90,122/-. Besides the aforesaid, Rs.25,000/- was granted, on the count of transportation, funeral and last rites of the deceased and on the count of 'loss of consortium', another amount of Rs.1 lakh was granted. In total, the compensation was granted to the extent of Rs.33,15,122/-.

The compensation, as awarded by learned Tribunal aforesaid, do call for re-computation, as per the prevalent settled law.

At the very outset, it is pertinent to mention that as per the matriculation certificate Ex.P2 and also, as reflected in the income tax return Ex.P9, upon which the reliance was placed, the date of birth of Anil Ralhan was mentioned as 25.07.1964. Thus, on the date of accident i.e. 06.08.2013, the deceased was 49 years old. The income tax return, which was the last return filed by the deceased, as such, has been appropriately taken into account and the earnings were taken as Rs.2,51,677/- per annum, the monthly, whereof has been taken as Rs.20,974/-. The income, so reflected, was in a range, which was exempted from income tax, if the permissible deductions are applied.

However, the addition on the count of 'future prospects' as done by learned Tribunal is on higher side. As per ***Pranay Sethi's case***, considering the age of the deceased and his source of livelihood, the addition on the count of 'future prospects' was to be to the extent of 25%, instead of 30%. Making it to be so, the income of the deceased is worked upon as Rs.20974+5243(25%)=Rs.26,217/-.

Proceeding further, considering the number of dependents, the deduction has been appropriately made to the extent of 1/4th and after deducting the same, the earnings comes to be Rs.26217-6554=Rs.19,663/-, annual whereof, comes to be Rs.2,35,956/-.

Considering the age of the deceased, as per ***Sarla Verma's case,*** appropriate and suitable multiplier, to be applied is '**13**' as applied by learned Tribunal and while applying the same, the loss of dependency, works out to be Rs.235956x13=**Rs.30,67,428/-**.

However, at this juncture, it is pertinent to mention that learned Tribunal had granted compensation to the extent of Rs.25,000/- on account of transportation, funeral and last rites and another amount of Rs.1,00,000/- was granted, on the count of 'loss of consortium'. But however, as held in ***Pranay Sethi's case (supra)***, amounts are to be paid under the conventional heads, like, '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. Thus, the wife, children and mother of the deceased, are also entitled to 'spousal', 'filial' and 'parental' consortium, on the count of 'loss of consortium'.

As per ***Pranay Sethi's case (supra)***, with the enhancement clause of 10%, after every three years of the passing of the judgment, the compensation, on the count of 'loss of consortium', works out to be, Rs.48,400/- to each of the claimants i.e. Rs.48400x5=**Rs.2,42,000/-** 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 Anil Ralhan, is re-computed, as herein given:-

Loss of dependency	:	**Rs.30,67,428/-**
Loss of consortium	:	**Rs.2,42,000/-**
Loss of estate	:	**Rs.18,150/-**
Funeral expenses	:	**Rs.18,150/-**
Total	:	**Rs.33,45,728/-**

As such, the compensation awarded by learned Tribunal stands enhanced from Rs.33,15,122/- to Rs.33,45,728/-. The enhanced amount of the compensation i.e. **Rs.30,606/-** shall be disbursed to appellant-claimant No.1-Smt.Rashmi and she shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The residue terms of the Award, as ordered by learned Tribunal, shall remain the same.

With the modification in the extent of compensation, as stated aforesaid, the present appeal filed by the insurance company, is hereby dismissed.

July 22, 2024 **(ARCHANA PURI)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**