IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224 **FAO-404-2015 (O&M)**
Date of Decision : 28.08.2024

United India Insurance Company Ltd. ....Appellant

VERSUS

Sunita and Others ....Respondents

224-1 **FAO-2629-2015 (O&M)**

Khushi and Others ....Appellant

VERSUS

Krishan Kumar and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. D.P. Gupta, Advocate
for the appellant in FAO-404-2015 and
for respondent No.3 in FAO-2629-2015.

Mr. Sansar Kundu, Advocate
for the appellants in FAO-2629-2015 and
for respondent Nos.2 to 6.

Mr. S.N. Pilania, Advocate
for respondent No.1 in FAO-404-2015 and
for respondent No.4 in FAO-2629-2015.

Mr. Munish Mittal, Advocate
for respondent Nos.7 and 8 in FAO-404-2015 and
for respondent Nos.1 and 2 in FAO2629-2015.

ALKA SARIN, J. (Oral)

1. This common order will dispose off both the above-captioned appeals being FAO-404-2015 filed by the Insurance Company and FAO-2629-2015 filed by the claimants challenging the award dated 12.11.2014

passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as the 'Tribunal').

2. For the sake of convenience, in the later part of the judgment, the parties will be referred to as 'claimants', 'owner', 'driver' and 'Insurance Company'.

3. Brief facts relevant to the present *lis* are that on 14.07.2012 Shiv Kumar (hereinafter referred to as the 'deceased') alongwith his friend Ajay and cousin Ravi was going to village Kharainti to see his ailing wife. The deceased and Ajay were going on motorcycle bearing registration No.HR-33A-2597. The rider of the said motorcycle was the deceased, who was driving the same at a moderate speed. Ravi was following them on another motorcycle. At about 10.00 pm when they reached in the area of village Lijwana Khurd towards Julana, a tractor trolley bearing registration No.HR-40A-4882 (hereinafter referred to as the 'offending vehicle') was parked in the middle of the road in a negligent manner and without any indicator or reflector. Due to oncoming lights the offending vehicle was not visible to the deceased and his motorcycle dashed into the same. The deceased and Ajay fell on the road and received multiple serious injuries. The deceased died at the spot. The accident was witnessed by Ravi, who was following them on his separate motorcycle. FIR No.105 dated 15.07.2012 was registered under Sections 283, 337 and 304-A of the Indian Penal Code, 1860 at Police Station Julana on the statement of the eye-witness Ravi. The claim petition was filed averring therein that the deceased was 27 years of age at the time of accident and was working as a mason. The written

statement was filed by the driver and owner of the offending vehicle. Besides raising the preliminary objections qua the maintainability, cause of action and locus standi, the factum of accident itself was denied. It was further averred by the driver and owner of the offending vehicle that the deceased himself was rash and negligent and that he had an accident with an unknown vehicle and later on the offending vehicle was falsely implicated in the present case. The written statement was also filed by the Insurance Company. Besides raising preliminary objections and the factum of the accident was denied by the Insurance Company. It was further the case of the Insurance Company that there was no negligence on the part of the driver of the offending vehicle and that the deceased was rash and negligent in driving his motorcycle. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the accident in question took place due to rash and negligent driving of offending vehicle i.e. tractor trolley bearing registration No.HR-40A-4882 by respondent No.1 Krishan Kumar in which Shiv Kumar son of Ram Kumar has died ? OPP
2. If issue No.1 is proved in affirmative, whether claimants are entitled to any amount of compensation, if so, to what amount and from whom they are entitled to receive ? OPP
3. Whether the driver of vehicle/tractor No.HR-40A-4882 was not holding a valid and effective driving licence on the date of alleged accident ? OPR-3
4. Relief.

4. The Insurance Company has preferred the appeal being FAO-404-2015 aggrieved by the award on the ground that though a finding has been returned by the Tribunal that it was a case of contributory negligence and negligence on the part of the deceased was assessed to the extent of 40%, however, while passing the award the said fact has not been taken into account and that 40% of the amount of compensation awarded by the Tribunal ought to have been deducted towards contributory negligence.

5. The claimants have preferred the appeal being FAO-2629-2015 challenging the quantum of compensation awarded to them on account of death of Shiv Kumar in the motor vehicle accident.

6. The claimants led their evidence. The driver and owner of the offending vehicle did not step into the witness-box. The Insurance Company examined Sher Singh, Clerk of the office of RTA, Rohtak as RW-1 who produced the driving licence of the driver – Krishan Kumar – and also tendered the driving licence as Ex.R1, copy of the registration certificate of the offending vehicle as Ex.R2 and copy of the insurance policy as Ex.R3. No other evidence was led.

7. The Tribunal 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	Amount after applying 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	Loss of consortium	Rs.1,00,000/-
	Total Compensation	**Rs.8,65,000/-**
	Interest	**7.5% per annum**

8. Learned counsel for the Insurance Company would contend that in the present case the deceased was held responsible to the extent of 40% for having contributed to the accident, however, while awarding the compensation 40% of the amount of compensation awarded by the Tribunal has not been deducted accordingly. Learned counsel for the Insurance Company would further contend that it was the driver of the motorcycle i.e. deceased, who was infact rash and negligent and there was no negligence on the part of the driver of the offending vehicle. Learned counsel for the Insurance Company has further contended that the amount awarded by the Tribunal towards compensation is on the higher side.

9. *Per contra* learned counsel for the claimants would contend that in the present case the offending vehicle was parked in the middle of the road without any indicator or reflector and it was 10.00 pm when the accident took place. Because of the oncoming lights, the offending vehicle could not be spotted by the deceased. Learned counsel for the claimants would further contend that the offending vehicle, which was parked by its driver in the middle of the road without indicators and that too in the night at 10.00 pm, was negligent. Learned counsel for the claimants has further contended that Ravi, who was the eye-witness of the accident, has specifically stated in his affidavit tendered in examination-in-chief regarding the fact that the offending vehicle was parked in the middle of the road without indicator or reflector. It is further the contention that no suggestion was put to him in his cross-examination that the offending vehicle was not

parked in the middle of the road and there were some indicators which were left on.

10. I have heard learned counsel for parties.

11. In the present case, firstly dealing with the argument raised by learned counsel for the Insurance Company that it was a case of contributory negligence and that 40% ought to have been deducted from the amount awarded by the Tribunal towards compensation deserves to be rejected. In the present case the issue of contributory negligence was not framed, however, the Tribunal has discussed the same while dealing with issue No.1. The onus to prove that it was a case of contributory negligence would be that of the Insurance Company. No evidence was led by the Insurance Company that it was a case of contributory negligence. Rather, even the driver and owner of the offending vehicle did not step into the witness-box. However, the eye-witness, who stepped into the witness-box as PW-2, clearly stated in his affidavit tendered in examination-in-chief that the offending vehicle was parked in the middle of the road without any indicator or reflector. Not even a suggestion was put to him in his cross-examination that the offending vehicle was not parked in the middle of the road or there was any indicator. Learned counsel for the Insurance Company has relied upon a judgment of this Court passed in **Jeet Singh & Ors. vs. Sukhdev Singh alias Mannu & Ors. [2019(4) PLR 725]** to contend that even if the vehicle was parked on the road, it will be a case of contributory negligence as driver of the motorcycle was required to take reasonable care. The judgment relied upon by learned counsel for the Insurance Company would be of no avail to him

inasmuch as every case is to be decided on the basis of facts of each case. In the present case, as discussed above, the eye-witness who has stepped into the witness-box as PW-2, has clearly stated that there was negligence on the part of the driver of the offending vehicle who had left the vehicle in the middle of the road without any indicator or reflector. Despite being subjected to a lengthy cross-examination, no suggestion was put to him regarding wrong parking of the offending vehicle. In view thereof, the aforesaid judgment relied upon by learned counsel for the Insurance Company would not come to his aid. That being so, the finding returned by the Tribunal that it was a case of contributory negligence is not tenable and hence, the amount has rightly not been deducted while calculating the amount of compensation. The second argument of learned counsel for the Insurance Company that there was no negligence on the part of the driver of the offending vehicle also deserves to be rejected. The offending vehicle was parked in the middle of the road at 10.00 pm. There was no indicator or reflector on the said offending vehicle to even indicate to the oncoming traffic or the traffic coming from behind that the offending vehicle was parked. Leaving the vehicle in the middle of the road without any indicator and that too at night definitely is an act of negligence on the part of the driver of the offending vehicle. In view thereof, the stand of the Insurance Company that there was no negligence on the part of the driver of the offending vehicle stands rejected.

12. Learned counsel for the claimants has not laid any challenge to the income of the deceased, multiplier and deduction applied by the

Tribunal. Learned counsel for the claimants has contended that the deceased in the present case was 27 years of age and no addition has been made towards loss of future prospects which ought to have been 40%. It is further the contention that no amount has been awarded under the conventional heads as well as the amount awarded under the head 'loss of consortium' is also not as per the law laid down by the Hon'ble Supreme Court. In support of his contentions the learned counsel for the claimants 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. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

13. In the present case, since no challenge has been laid to the income of the deceased assessed as Rs.5,000/- per month, deduction of $1/4^{th}$ towards personal expenses of the deceased and the multiplier of '17' applied by the Tribunal and hence the same are accordingly maintained. However, no addition has been made towards loss of future prospects and hence as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects keeping in view the age of the deceased being 27 years at the time of accident. Further, no amount has been awarded under the conventional heads and the amount awarded under the head 'loss of consortium' is also not as per 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 claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and to an amount of Rs.48,000/- each (Rs.40,000+20% increase) towards loss of spousal, parental and filial consortium. 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 1/4th	[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	Loss of consortium (i) Parental (ii) Spousal (iii) Filial	 [Rs.48,000 x 4] = Rs.1,92,000/- Rs.48,000/- Rs.48,000/- **(Rs.2,88,000/-)**
	Total Compensation	**Rs.13,95,000/-**

14. 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 amount shall be apportioned between the claimants as directed by the Tribunal.

15. In view of the above discussion, the appeal being FAO-404-2015 filed by the Insurance Company is dismissed and the appeal being FAO-2629-2015 filed by the claimants is allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

28.08.2024
jk

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