2024:PHHC:170333

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-478-2015 (O&M)**
Date of Decision : 18.12.2024

Anju Rani & Ors ... Appellant(s)

Versus

Ram Bahadur Singh & Ors ... Respondent(s)

2. **FAO-3785-2014 (O&M)**

New India Assurance Company Ltd ... Appellant(s)

Versus

Anju Rani & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Bikramjit Singh, Advocate
for the appellants in FAO-478-2015 and
for the respondent Nos.1 to 5 in FAO-3785-2014.

Mr. R.C. Kapoor, Advocate
for the appellant in FAO-3785-2014 and
for the respondent No.3 in FAO-478-2015.

ALKA SARIN, J. (Oral)

1. The present order shall dispose off the above noted two appeals. The parties are being referred to as the claimants, Insurance Company and owner and driver for the sake of clarity. **FAO No.3785 of 2014** has been filed by the Insurance Company and **FAO No.478 of 2015** has been filed by the claimants, both challenging the award dated 10.03.2014 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'Tribunal') on account of death of Naresh Kumar (hereinafter referred to as the 'deceased').

2. Brief facts relevant to the present *lis* are that on 14.03.2012, Naresh Kumar alongwith Dharamvir was coming back in an Indica car bearing Registration No.HR-44-C-0909 to Sirsa from Malout after attending a marriage. At that time, the car in question was being driven by Dharamvir, whereas Naresh Kumar was in the car as a passenger. One Bhoop Singh alongwith Rajender was also coming in his own car behind the car in question and when they reached little ahead of village Tappi at about 11.00 pm, a truck tipper bearing Registration No.HR-55-C-0673 was going ahead of the car in question. Dharamvir gave a dipper and blew the horn seeking way to overtake the truck tipper upon which the truck tipper in question indicated allowing them to overtake. However, when Dharamvir started overtaking, all of a sudden, the driver of the truck turned it towards its right side as a result of which the car in question struck against the rear end of the truck tipper and both the occupants of the car i.e. Dharamvir and Naresh Kumar received serious injuries and subsequently succumbed to their injuries. FIR No.27 dated 15.03.2012 was registered under Sections 279, 304-A and 427 of the Indian Penal Code, 1860. It was averred that the accident took place due to the rash and negligent driving of the driver of the offending vehicle. The Tribunal vide the impugned award held that the driver of the offending vehicle was driving the vehicle in a rash and negligent manner and awarded the following compensation :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly income	Rs.5,500/-
2	Future Prospects 30%	[Rs.5,500 + 1,650] = Rs.7,150/-
3	Deduction 1/4th	[Rs.7,150 – 1,787] = Rs.5,363/-

4	Annual Income	[Rs.5,363 x 12] = Rs.64,356/-
5	Multiplier of 14	[Rs.64,356 x 14]=Rs.9,00,984/-
6	Loss of love and affection	Rs.25,000/-
7	Funeral expenses	Rs.25,000/-
8	Transportation	Rs.2,000/-
9	Loss of consortium	Rs.1,00,000/-
	Total Compensation	**Rs.10,52,984/-**
	Interest	**7.5% per annum**

3. Aggrieved by the same, **FAO No.3785 of 2014** has been filed by the Insurance Company and **FAO No.478 of 2015** has been filed by the claimants.

4. Learned counsel for the Insurance Company would contend that the driver of the car was negligent in not maintaining a safe distance from the truck tipper and, hence, it would be a case of contributory negligence as the car hit the truck tipper from behind. The learned counsel would further contend that the driver of the truck tipper had two driving licences and when one was found to be forged and fabricated, a second licence was produced and, hence, relying upon the judgment of this Court in the case of **National Insurance Company Ltd. Vs. Arfoon Nisa & Ors. [2015 (9) RCR (Civil) 406]** the learned counsel would contend that the Insurance Company ought to have been given recovery rights. The learned counsel for the Insurance Company would further contend that the age of the deceased, as per the school leaving certificate, was 40-41 years and, hence, future prospects ought to have been 25% instead of 30%. The learned counsel would further contend that sufficient amount has already been awarded as compensation in the present case and that there is no scope of any enhancement.

5. *Per contra*, the learned counsel for the claimants would contend that Dharamvir who was driving the car tried to overtake the truck tipper by giving a dipper and blowing the horn and after the driver of the truck tipper had indicated allowing the car to overtake, Dharamvir started overtaking and all of a sudden the driver of the truck turned it towards its right side, as a result of which the accident took place. The learned counsel would further contend that no evidence has been led to the contrary. It is further the contention of the learned counsel that the date of birth of the deceased was mentioned in the school leaving certificate as 31.07.1971 and that the Tribunal has rightly awarded the future prospects to the extent of 30%. It is further the contention of the learned counsel that though the Tribunal has rightly assessed the income of the deceased and applied the deduction to the extent of 1/4th so is the multiplier, however, the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are on the lower side.

6. The driver and owner of the offending vehicle were proceeded against *ex parte* vide order dated 02.12.2014.

7. I have heard the learned counsel for the parties.

8. The argument of the learned counsel for the Insurance Company that it would be a case of contributory negligence deserves to be rejected. In the present case, Bhoop Singh had stepped into the witness box as RW3 to depose qua the accident and he specifically stated in his affidavit filed in examination-in-chief that the accident took place when the driver of the truck tipper, after giving an indicator allowing Dharamvir to overtake,

turned the truck towards its right side leading to the accident. Not even a suggestion had been put that the manner in which the accident had been narrated by the said witness was incorrect. In view thereof, no fault can be found with the finding returned by the Tribunal.

9. The argument of the learned counsel for the Insurance Company that the driver of the offending vehicle was holding two driving licences also deserves to be rejected. In the case of **National Insurance Company Ltd. vs. Swaran Singh & Ors. [(2004) 3 SCC 297]** Hon'ble Supreme Court has *inter-alia* held that *"The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time"*.

10. There is not an iota of evidence on the record led by the Insurance Company to show that the second driving licence was not a valid licence. Further, in view of the law laid down by the Hon'ble Supreme Court in the case of **Swaran Singh** (supra), the judgment relied upon by the learned counsel for the Insurance Company in the case of **Arfoon Nisa**

(supra) would not come to his aid. In view thereof, this argument of the learned counsel for the Insurance Company stands rejected.

11. The argument of the learned counsel for the Insurance Company that future prospects ought to have been 25% instead of 30% as the deceased was 40-41 years deserves to be accepted. In the present case the date of birth of the deceased was mentioned in the school leaving certificate as 31.07.1971 and he was about 40 years and 7 months at the time of accident and, hence, an addition of 25% would be applicable instead of 30% keeping in view the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**.

12. The argument of the learned counsel for the claimants that the amounts awarded under the conventional heads as well as under the head 'loss of consortium' are on the lower side also deserves to be accepted. Keeping in view the law laid down by the Hon'ble Supreme Cout in the cases of **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]**, 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 the claimants (spouse, three children and mother of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. In the present case, no challenge has been laid to the income of the deceased,

multiplier and deduction and, hence, the same are maintained. Accordingly, the reworked compensation is as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly Income	Rs.5,500/-
2	Annual Income	[Rs.5,500x12]=Rs.66,000/-
3	Deduction 1/4th	[Rs.66,000-16,500]=Rs.49,500/-
4	Future Prospects - 25%	[Rs.49,500+12,375]=Rs.61,875/-
5	Multiplier - 14	[Rs.61,875x14]=Rs.8,66,250/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Parental (ii) Filial (iii) Spousal	 [Rs.48,000/-x3]=Rs.1,44,000/- [Rs.48,000/-x1]=Rs.48,000/- Rs.48,000/- (Total Rs.2,40,000/-)
	Total Compensation	**Rs.11,42,250/-**

13. 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.

14. In view of the above discussion, the appeal being **FAO No.3785 of 2014** filed by the Insurance Company and **FAO No.478 of 2015** filed by the claimants stand disposed off. The impugned award is modified to the extent stated above. Pending applications, if any, also stand disposed off.

18.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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