IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2588-2017 (O&M)
Reserved on : 28.11.2024
Date of Decision : 10.12.2024

Tata AIG General Insurance Company Ltd. ....Appellant

VERSUS

Smt. Mitlesh and Others ....Respondents

FAO-4649-2017 (O&M)

Mitlesh and Others ....Appellants

VERSUS

Aamin Khan @ Lila @ Sanjay and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sachin Ohri, Advocate
for the appellant-Tata AIG General Insurance Company
in FAO-2588-2017 and for respondent- No.3 in FAO-4649-017.

Mr. S.S. Khurana, Advocate
for the appellants in FAO-4649-2017 and
for respondent Nos.1 to 4 in FAO-2588-2017

Mr. Vinod Chaudhri, Advocate
for respondent No.7-Oriental General Insurance Co. Ltd.
in FAO-2588-2017 and for respondent No.4 in FAO-4649-2017

ALKA SARIN, J.

1. Present order shall dispose off the above-captioned appeals. FAO-2588-2017 has been filed by Tata AIG General Insurance Company Ltd., while FAO-4649-2017 has been filed by the claimants aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal') on account of death of Madan Lal (hereinafter referred to as the 'deceased') vide award dated

05.12.2016. The parties are being referred to as the claimants, driver, owner and Tata AIG General Insurance Company Ltd. and Oriental General Insurance Company Ltd., for the sake of clarity.

2. The brief facts relevant to the present *lis* are that on 13.11.2012, Madan Lal alongwith one Rajesh was coming to village Sudharana, Tehsil Kosli on a motorcycle bearing registration No.HR-43A-7220 which was being driven by him at a normal speed and by observing all traffic rules. At about 02.15 pm, when they reached near Kavita Nursing Home, a truck bearing registration No.HR-61-9071 (hereinafter referred to as the 'offending vehicle') came from the behind and hit the motorcycle in a rash and negligent manner resulting in death of deceased-Madan Lal and causing multiple injuries to Rajesh. FIR No.245 dated 13.11.2012 under Sections 279, 337, 338, 304-A of the Indian Penal Code, 1860 was registered at Police Station Kosli.

3. The claim petition filed by the claimants was contested by the driver and owner of the offending vehicle by filing a joint written statement wherein it was averred that no accident as alleged had taken place with the offending vehicle and that the offending vehicle was comprehensively insured with the Oriental General Insurance Company Ltd. and further that a false FIR was got registered against them just to get the compensation. The Tata AIG General Insurance Company Ltd. filed its separate written statement averring therein that the policy No.0100687813 was issued by them in the name of Rajbir Singh qua the vehicle bearing registration No.HR-61-9071 for a period commencing from 13.12.2012 to 12.12.2013. It was further averred that since the accident took place on 13.11.2012, therefore, the cover-note was not valid on the date of the accident. It was

further averred that during investigation it was found that the offending vehicle was insured with M/s Oriental General Insurance Company Ltd. vide policy No.215390/31/2012/2445 from 13.12.2011 to 12.12.2012. It was further pleaded that on the basis of the policy issued by the Oriental General Insurance Company Ltd., the Tata AIG General Insurance Company Ltd. had issued a cover-note on 12.12.2012. In the written statement filed by the Oriental General Insurance Company Ltd. it was averred that on 13.11.2012 the driver of the offending vehicle did not have the valid and effective driving licence and that the particulars of the policy have not been confirmed till date and, hence, the offending vehicle was not insured with them.

4. On the basis of the pleadings of the parties the following issues were framed :

> 1. Whether deceased Madan Lal died and injured Rajesh sustained injuries and damage was caused to motorcycle no.HR-43A-7220 belonging to Madan Lal (deceased) in a motor vehicle accident that occurred on 13.11.2012 due to rash and negligent driving of offending vehicle truck/dumpher bearing registration no.HR-61-9071 by respondent no.1 ? OPP
>
> 2. Whether the petitioners are entitled to get compensation, if so to what amount and from whom ? OPP
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> 3. Whether the respondent no.1 was not holding a valid and effective driving licence on the date of alleged accident ? OPR-3

4. Whether the respondent no.3-A is not liable to pay any amount of compensation as pleaded ? OPR-3A

5. Relief.

5. The Tribunal awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.10,000/-
2	Deduction – 1/4th	[Rs.10,000 – 2,500] = Rs.7,500/-
3	Annual Income	[Rs.7,500 x 12] = Rs.90,000/-
4	Multiplier of 14	[Rs.90,000 x 14] = Rs.12,60,000/-
5	Transportation, funeral and last rites	Rs.20,000/-
6	Loss of consortium	Rs.20,000/-
	Total Compensation	**Rs.13,00,000/-**
	Interest	**7.5% per annum**

<u>FAO-2588-2017 (O&M)</u>

6. The argument of learned counsel for the Tata AIG General Insurance Company Ltd. is that the cover-note which had been issued by it was not valid on the date of the accident and the offending vehicle was insured with the Oriental General Insurance Company Ltd. for the said period. It is further the contention that copy of the cover-note, which is retained by the Insurance Company and was produced on the record, showed that the validity of the said cover-note was from 13.12.2012 to 12.12.2013 and therefore, for the accident that took place on 13.11.2012, the Tata AIG General Insurance Company Ltd. could not be held liable.

7. *Per contra* Mr. S.S. Khurana, Advocate appearing on behalf of the injured-claimant and Mr. Vinod Chaudhri, Advocate appearing on behalf of the Oriental General Insurance Company Ltd. have argued that the Tribunal had categorically held that the cover-note (Ex.R1), which was found in the offending vehicle, was never denied by the Tata AIG General Insurance Company Ltd. The said cover-note showed that the offending vehicle was insured from the period 04.11.2012 to 03.11.2013 thereby covering the period when the accident took place. It is further the contention that neither in the written statement nor in the statement of the Manager of the Tata AIG General Insurance Company Ltd. it was ever denied that the cover-note (Ex.R1) was issued. Infact, it was never the case of the Tata AIG General Insurance Company Ltd. that the cover-note (Ex.R1) was forged, fabricated or manipulated in any manner. Learned counsel have further argued that a categoric finding has been recorded by the Tribunal after affording due opportunity to Tata AIG General Insurance Company Ltd. to lead their evidence that the cover-note (Ex.R1) was not valid however it never denied having issued the same. Further still, no evidence was led by the Tata AIG General Insurance Company Ltd. to show that the document was forged, fabricated or manipulated.

8. Heard.

9. In the present case, dealing with the argument raised by learned counsel appearing on behalf of Tata AIG General Insurance Company Ltd. that the offending vehicle was never insured with it, the said argument deserves to be rejected on the ground that the cover-note (Ex.R1), which was found in the offending vehicle, was never denied by Tata AIG General Insurance Company Ltd. The cover-note (Ex.R1) reveals that the offending vehicle was insured from 04.11.2012 to 03.11.2013 thereby covering the period when the accident took place. Neither in the written statement nor in the statement of the Manager of the Tata AIG General Insurance Company Ltd. was it ever denied that the cover-note (Ex.R1) was not issued by them.

It is further to be noted that it has never been the case of Tata AIG General Insurance Company Ltd. that the cover-note (Ex.R1) was forged, fabricated and manipulated in any manner. That being so, the argument of learned counsel for the Tata AIG General Insurance Company Ltd. cannot be accepted. Accordingly, the appeal being FAO-2588-2017 is dismissed.

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10. Learned counsel for the claimants would contend that though the Tribunal has rightly assessed the income of the deceased as Rs.10,000/- per month and also correctly applied a deduction of 1/4th and a multiplier of '14', 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. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]**.

11. *Per contra* learned counsel for the Tata AIG General Insurance Company Ltd. would contend that sufficient amount of compensation has already been awarded and hence there is no scope of any further enhancement.

12. Heard.

13. In the present case, income, deduction and multiplier have not been challenged by the claimants. However, no addition has been made

towards loss of future prospects. The deceased in the present case was 45 years of age and keeping in view his age, 25% 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 claimants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) each towards loss of estate and funeral expenses. The claimants would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) each towards loss of consortium.

14. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.10,000/-
2	Annual Income	[Rs.10,000 x 12] = Rs.1,20,000/-
3	Deduction – 1/4th	[Rs.1,20,000 – 30,000] = Rs.90,000/-
4	Future Prospects - 25%	[Rs.90,000 + 22,500] = Rs.1,12,500/-
5	Multiplier - 14	[Rs.1,12,500 x 14] = Rs.15,75,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	<u>Loss of consortium</u> (i) Spousal (ii) Parental	 Rs.48,000/- [Rs.48,000 x 3] = 1,44,000 **Rs.1,92,000/-**
	Total	**Rs.18,03,000/-**

15. 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.

16. In view of the above discussion, the appeal being FAO-2588-2017 filed by the Tata AIG General Insurance Company Ltd. is dismissed and the appeal being FAO-4649-2017 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)
10.12.2024 **JUDGE**
jk

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