IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4590-2017 (O&M)
Date of Decision:-**02.05.2024**

Smt. Sudesh and Others

… Appellants

Versus

Bhadur Singh and Others

... Respondents

-.-

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

-.-

Argued by: Mr. Sajjan Singh Malik, Advocate
for the appellants.

Service of respondents No.1 to 3 dispensed with vide order dated 29.08.2019.

Mr. Diwan S. Adlakha, Advocate
for respondent No.4/Insurance Company.

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RITU TAGORE, J.

1. This is claimants' appeal for enhancement of compensation amount.

2. Learned Motor Accident Claims Tribunal, Rohtak (herein after referred to as 'the Tribunal'), vide award dated 01.02.2017, granted ₹6,02,500/- as compensation for the death of Lachhman, aged 30 years, a self-employed person in business of dairy farming and cattle feed.

3. For the sake of convenience the parties shall be referred to as per their status before the learned Tribunal.

4. The relevant facts for adjudication of this appeal are that on 08.10.2015 deceased-Lachhman was going to Rohtak from his village Shimli, District Rohtak on motorcycle bearing No.HR-12-J-3543, when reached on Jhajjar-Rohtak road, meantime, a truck bearing No.RJ-11GA-5784 (referred as offending vehicle) driven by respondent No.1 at a very high speed and in rash and negligent manner, came from Rohtak side and hit motorcycle of the deceased. As a result thereof, deceased fell down on the road and sustained grievous injuries. The deceased was taken to Rohtak by Ajay s/o Man Singh, where he was declared brought dead.

5. The accident was reported to police, where upon FIR No.0641 dated 09.10.2015 under Sections 279, 304-A IPC was registered at Police Station Sadar, Rohtak against respondent No.1-Bahadur Singh.

6. Claimants filed petition No 6/2016 under section 166 Motor Vehicles Act 1988 (for short 'the Act'), seeking compensation of ₹,50,00,000/- (Fifty lacs only) from the respondents (driver, *Superdar*, owner and the insurance company) of the offending vehicle, for loss of dependency, love and affection etc to them on account of death of Lachhman in the accident.

7. Respondents upon notice from the Tribunal, filed the reply and denied the accident and involvement of the offending vehicle, and further pleaded that accident could not have happened on the west side of the road in the manner it has been alleged. Respondent No.4, in addition, pleaded violation of terms and conditions of policy with respect to driving licence of driver-respondent No.1 being not valid and effective. By denying the other

averments of the claimants as to their entitlement, prayed for the dismissal of petition.

8. From pleading of the parties, learned Tribunal framed following issues:-

1. Whether accident in question occurred due to rash and negligent driving of vehicle i.e. truck bearing registration No.RJ-11GA/5784 by respondent No.1? OPP
2. If issue No.1 is proved, whether Lachman son of Tek Ram has died due to the injuries received by him in the above- said accident, if so to what amount of compensation and from whom the claimants are entitled to? OPP
3. Whether there was willful violation of the terms and conditions of the insurance policy, if so to what effect? OPR3
4. Relief.

9. The parties led their respective evidence as detailed in the Award. Thereafter, learned Tribunal on the appraisal of facts, pleading and evidence on record, held that deceased died due to the injuries sustained in the accident in question, involving the offending vehicle. However, concluded that accident occurred on account of equal contributory negligence of both, deceased and respondent No.1, the driver of the offending vehicle, as both failed to observe the traffic rules while driving their vehicles. Learned Tribunal on assessment of income, age of the deceased, the dependency of claimants upon him, granted compensation of ₹6,02,500/- along with cost and interest @ 9% per annum, from the date of institution of petition, till realization and made respondents jointly and severally liable to pay compensation.

10. Being aggrieved by the findings of the learned Tribunal on contributory negligence and inadequacy in the compensation amount, claimants filed the instant appeal for reappraisal of the evidence on the issue of negligence and enhancement in the quantum of compensation.

11. Learned counsel for the appellants-claimants, contended that learned Tribunal erred in holding that accident occurred on account of equal contribution of both the deceased and driver of the offending vehicle. As a matter of fact, learned Tribunal misread the evidence, much less the site plan Ex. R1 and erred in ignoring the testimonial account of sole eye-witness Ajay (PW-3), who categorically deposed that accident occurred due to the sole negligence of the driver (respondent No1) of the offending vehicle that led to the registration of FIR Ex. P5 against the driver alone. In this regard a prayer was made to reverse the finding of contributory negligence against the deceased by holding respondent No.1 sole responsible for causing the accident.

12. Learned counsel for the appellants-claimants further urged that learned Tribunal failed to grant compensation towards future prospect, loss of estate, love and affection, mental agony, transportation etc. Further deduction of $1/4^{th}$ of income towards personal expenses of deceased instead $1/6^{th}$ due to large dependency upon the deceased has also been challenged being not in consonance with the settled position of law and guidelines laid by the Courts governing the issue. It is also urged that considering the age of the deceased, multiplier of 17 is required to be applied in place of 16. Based on above submissions, it is urged that compensation should be redetermined.

13. Contrary to it, learned counsel for the Insurance Company supported and defended the findings of the learned Tribunal by urging that

evidence clearly demonstrate that deceased also contributed in causing the accident as he did not observe the traffic rules, while negotiating the national highway, while coming from village Shimli and approaching the Jhajjar-Rohtak road. Learned counsel, however, could not deny that compensation needs to be reassessed, in the light of ratio of **National Insurance Company Ltd. Vs. Pranay Sethi and others' (2017) 16 SCC 680** and followed in other judicial precedents. Learned counsel, however, pleaded that fixed amount under the head of 'loss of consortium' is to be given as per the observations made in **Shri Ram General Insurance Company Ltd. vs. Bhagat Singh Rawat and others' 2023 ACJ 2330**.

14. I have heard learned counsel for the parties and have gone through the record with their valuable assistance.

15. Insofar as the findings of learned Tribunal, holding both deceased and driver (respondent No.1), contributed in causing the accident are concerned, same are well reasoned and are based on sound appreciation of evidence. Learned counsel for the claimants failed to point out any flaw in the observation of the learned Tribunal holding that deceased was required to take 'U' turn to approach Jhajjar-Rohtak road for going towards Rohtak while coming from Shimli. It is own case of the claimants that deceased was going towards Rohtak from his village Shimli. Although eye-witness Ajay (PW-3) denied negligence of the deceased, yet the site plan Ex.R1 shows that accident took place just on the national highway near the point, where road from Shimli meets the highway. This shows that deceased was also negligent while driving the vehicle as he did not take due care and caution and should have followed the principle of 'wait and watch' before approaching the main road from the bye or side lane of village Shimli.

16. It is settled position of law that the Tribunal is to assess the evidence independently from the evidence collected in criminal case, such as registration of FIR, framing of charge-sheet, conviction or acquittal of the driver in criminal case on the issue of negligence of the driver(s) and cause of accident. After re-appraisal of the evidence on issue No.1, it is held that learned Tribunal has rightly concluded that accident occurred due to the contributory negligence of both the deceased and the driver of the offending vehicle. The findings of the Tribunal on the aforesaid issue being based on correct appreciation of the evidence, thus requires no interference from this Court and are affirmed.

17. Now coming on the quantum of compensation, there is no dispute that deceased was aged 30 years at the time of his death. The dependency of claimants upon the deceased is also not in dispute. The determination of the deceased's monthly income at ₹7,500/- by the learned Tribunal based on minimum wages, could not be faulted by the claimants, who failed to provide any other evidence to establish that deceased was earning more than ₹7,500/- per month. The deduction of $1/4^{th}$ from the income of the deceased towards his self-maintenance and expenses is also in consonance with the ratio of judgment of Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others' (2017) 16 SCC 680** and **Sarla Verma Vs. Delhi Transport Corporation 2009(3) RCR (Civil) 77**, wherein it is observed that when dependent's family members are between 4 to 6, $1/4^{th}$ deduction from the income of deceased is to be made on self-expenses of the deceased.

18. The learned Tribunal, however faulted in applying multiplier of 16, after taking the age of deceased, 30 years. The table given in **Sarla**

Verma (*supra*) provides for multiplier of 17, for the persons falling in the age group of 26-30; and multiplier of 16 for the persons coming in the bracket age of 31-35 years. So in this case, keeping in view the age of deceased as 30 years at the time of his death, multiplier of 17 needs to be adopted.

19. Admittedly, the grant of compensation under the conventional heads does not concord with the judicial precedents, governing the issues.

20. Insofar as grant of compensation under the conventional heads is concerned, learned counsel for the claimants while referring to **Pranay Sethi (*supra*)**, **Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others (2018) SCC Online SC 1546 and Rajwati alias Rajjo and others vs. United India Insurance Company Ltd. and others 2023 (1) R.C.R. (Civil) 205,** submitted that each claimant is entitled to be awarded compensation for 'loss of consortium'. Opposing the arguments, learned counsel for the respondents, while placing reliance on **Shri Ram General Insurance Company Ltd. vs. Bhagat Singh Rawat and others 2023 ACJ 2330**, submits that consolidated amount fixed under one head is to be given, not per legal heir.

21. In **Pranay Sethi case *(supra)*** Constitutional Bench of Hon'ble the Supreme Court delivered the judgment on 31.10.2017 and observed that reasonable figures on the conventional heads, namely, 'loss of estate' ₹15,000/-; 'loss of consortium' ₹40,000/- and 'funeral expenses' ₹15,000/- should be granted and further observed that aforesaid amount should be enhanced at the rate of 10% in every three years.

22. Thereafter, two Judge Bench of Hon'ble the Supreme Court in **Magma General Insurance Company Ltd. (*supra*),** while relying on

Pranay Sethi case (*supra*) awarded compensation of ₹40,000/- each, to father and sister of the deceased for 'loss of consortium'. Thereafter, three Judge Bench of Hon'ble the Supreme Court in **United India Insurance Company Ltd. vs. Satinder Kaur @ Satwinder Kaur and others 2021 (11) SCC 780** granted ₹40,000/- to each of the three children for 'loss of parental consortium'. Again in **N. Jayasree and other vs. Cholamandalam MS General Insurance Company Ltd. 2021 (4) R.C.R. (Civil) 642** awarded ₹44,000/- towards 'loss of spousal consortium' and ₹44,000/- each to two children towards 'loss of parental consortium'. In **Rajwati alias Rajjo and others case *(supra)***, Hon'ble the Supreme Court, while relying upon **Satinder Kaur @ Satwinder Kaur and others *(supra)***, granted ₹44,000/- to each appellant towards 'loss of consortium'. Again, in recent pronouncement of **Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others 2023 (3) R.C.R. (Civil) 573**, Hon'ble the Supreme Court held that all the dependents should be separately awarded towards 'loss of consortium' and amount of ₹40,000/- to each of the dependents towards 'loss of consortium'.

23. In **Shri Ram General Insurance Company Ltd. case *(supra)***, the Insurance company, had raised two fold issue before Hon'ble the Supreme Court. The Hon'ble Court issued notice in terms as "The notice in terms of order dated 13.10.2020 was confined only to two aspects i.e., the sum for loss of love and affection being ₹50,000/- and for loss of consortium for ₹40,000/- could not have been granted to each of the three dependents separately but in toto and that would be the amount quantified. This was in terms of the judgment in **Pranay Sethi and others (*supra*).** While answering to the aforesaid query, Hon'ble the Supreme Court observed on 27.03.2023

as under :-

> *"5. Learned counsel for the respondents did endeavour to persuade us that it should be per the legal heir by relying on* **'Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others' (2018) SCC Online SC 1546.**
>
> *6. We are, however, of the view that the total amount has to be assigned under a particular heading and that will go depending on the number of legal heirs present.*
>
> *7. The amounts fixed in terms of Pranay Sethi's case (supra) are Rs.50,000/- and Rs.40,000/- respectively under the two heads and that should be the total amount payable."*

24. In **Shri Ram General Insurance Company Ltd. case *(supra)*,** a three Judge Bench decision of Hon'ble the Supreme Court in **Satinder Kaur @ Satwinder Kaur and others case (*supra*)** was not brought to the notice of Hon'ble Bench. In view of the consistent view taken by Hon'ble the Supreme Court, followed in **Rahul Ganpatrao Sable case *(supra)***, elaborating on the issue, the contention of learned counsel for the Insurance Company that a consolidated sum of ₹40,000/- with applicable increase under the head of 'loss of consortium' be awarded and not separately to each claimant, cannot be accepted. 'Loss of consortium', be filial, parental or spousal, affects each individual in its own way. Indeed, said loss cannot be measured in terms of money, suffered by each individual relation in a death case. In a recent judgment of Hon'ble the Supreme Court delivered on 05.07.2023 in **Rahul Ganpatrao Sable case *(supra)*,** it has been categorically observed that all the dependents be separately awarded for loss of consortium.

25. Keeping in view that deceased was self-employed and aged 30 years, future prospects 40% required to be given, as per ratio of **Pranay Sethi's case (*supra)***.

26. Perusal of the Award shows that the learned Tribunal granted ₹1,00,000/- towards 'loss of consortium' and ₹25,000/- as funeral expenses and added in the total of 'loss of dependency', assessed ₹10,80,000/- and thereafter deducted half of the assessed amount i.e., ₹12,05,000/- towards contributory negligence and granted ₹6,02,500/-. To the considered opinion of this Court, the learned Tribunal has faulted in its approach. The aforesaid amount under conventional heads ought not to have been considered towards contributory negligence. The compensation is re-determined as under :-

Name of the deceased – Lachhman Age – 30 years Status - Married Amount given by learned MACT - ₹6,02,500/- along with 9% interest per annum		
Reassessment of award amount		
Sr. No.	**Heads**	**Income (in Rupees)**
1.	Annual Income (₹7,500/- per month x 12)	₹90,000/-
2.	Future prospects @ 40% (₹7,500 + ₹3,000/-)	₹10,500/-
3.	Deduction 1/ 4th (₹10,500/- / 2625)	₹7,875/-
4.	Multiplier of 17 on total income (₹7,875/- x 12 x 17)	₹16,06,500/-
5.	Contributory negligence 50%	₹8,03,250/-
6.	Loss of estate & funeral expenses (10% increase in every three years in view of Pranay Sethi (supra)	₹36,000/-
7.	Loss of consortium	₹2,88,000/-

	(spousal and parental) x 6 (10% increase in every three years in view of Pranay Sethi (supra)	(₹48,000/- x 6)
8.	Total	₹11,27,250/-

27. The total loss of dependency assessed by this Court is ₹8,03,250/- out of which the learned Tribunal has assessed 'loss of dependency' as ₹10,80,000/- and after making a deduction of contributory negligence, it comes out to be ₹5,40,000/-, same is, therefore, deducted from the total 'loss of dependency' assessed by this Court i.e. ₹8,03,250/- **(-)** ₹5,40,000/- (granted by MACT) = ₹**2,63,250**/-.

28. ₹2,88,000/- and ₹36,000/- as assessed being compensation under the conventional head is added in the amount of total loss of dependency of ₹**2,63,250/-**, which comes out to be ₹**5,87,250**/-.

29. Learned Tribunal has granted interest at 9% per annum, which seems excessive, considering the prevalent bank rate of interest. Therefore, the interest as granted by the learned Tribunal needs to be reduced and grant of interest @ 7.5% per annum is deemed appropriate. Accordingly, same is granted.

30. In view of the above, the impugned award is accordingly modified to the aforesaid extent. The insurance company is therefore directed to deposit the amount of ₹**5,87,250**/- along with interest at the rate of 7.5% per annum from the date of filing of the petition till its realization, with the learned Tribunal within a period of 30 days from the date of receipt of certified copy of this judgment.

31. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

02.05.2024
Gaurav Sorot

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No