2024:PHHC:155630

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-6830-2017 (O&M)**
Date of Decision : 25.11.2024

Shashi & Ors ... Appellant(s)

Versus

Rupinder Dhiman & Ors ... Respondent(s)

2. **FAO-5954-2017 (O&M)**

United India Insurance Co Ltd ... Appellant(s)

Versus

Shashi & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raj Dev Sharma, Advocate
for the appellants in FAO-6830-2017 and
for the respondent Nos.1 to 5 in FAO-5954-2017.

Mr. Munish Puri, Advocate
for the respondent Nos.1 and 2 in FAO-6830-2017 and
for the respondent Nos.6 and 7 in FAO-5954-2017.

Mr. Harsh Aggarwal, Advocate
for the respondent No.3 in FAO-6830-2017 and
for the appellant in FAO-5954-2017.

ALKA SARIN, J. (Oral)

1. The present order shall dispose off the above noted two appeals. The parties are being referred to as claimants, Insurance Company and

owner and driver of the offending vehicle for the sake of clarity. FAO No.6830 of 2017 has been preferred by the claimants challenging the impugned award dated 06.05.2017 passed by the Motor Accident Claims Tribunal, Pathankot (hereinafter referred to as 'Tribunal') aggrieved by the quantum of compensation. FAO No.5954 of 2017 has been preferred by the Insurance Company.

2. Brief facts relevant to the present *lis* are that the claimants approached the Tribunal by filing a claim petition under Section 166 of the Motor Vehicle Act, 1988 for compensation on account of death of Sh. Wilson Nahar @ Wilson son of Sh. Prem Masih, in a motor vehicular accident which took place on 23.12.2016 at about 5.00 pm near Adda Adha Khuh, Shahpurkandi Road, Pathankot, Tehsil and District Pathankot. It was averred in the claim petition that on 23.12.2016 at about 5.00 pm the deceased was going from Pathankot to Shahpurkandi on his motorcycle bearing registration No.PB-35-P-5426 at a slow speed and on the correct side of the road and when he reached near Adda Adha Khuh, Shahpurkandi Road, Pathankot, a car bearing No.PB-35-D-1520, which was being driven by the driver of the offending vehicle in a rash and negligent manner, came from the opposite side without blowing horn coming on to the wrong side dashed into the motorcycle of the deceased, resulting in multiple serious injuries. The deceased succumbed to his injuries during treatment at Raj Hospital, Pathankot. FIR No.100 dated 24.12.2006 was registered under Sections 279, 427, 304-A IPC against the driver of the offending vehicle at Police Station, Shahpurkandi. It was further averred in the claim petition that

the deceased was employed as Beldar in UBDC, Amritsar, Sub Division Aliwal, Irrigation Department, Tehsil and District Pathankot and was earning ₹35,000/- per month and the claimants were completely dependent upon him. On notice, the owner and driver of the offending vehicle put in appearance and contested the claim petition by filing their written statement denying all the averments therein. However, it was pleaded that in case the claimants are held entitled to the compensation, the Insurance Company would be liable to pay the same. Written statement was also filed by the Insurance Company raising all usual legal pleas. On merits, it was denied that any accident took place. However, it was admitted that the FIR had been registered. On the basis of the pleadings, the following issues were framed :

i) Whether on 23.12.2016 at about 5.00 p.m in the area of Adda Adha Khuh, Wilson Nahar @ Wilson had died due to rash and negligent driving of Car bearing registration No. PB-35-D 1520 by respondent no.1 ? OP claimant

ii) If issue no.1 is decided in affirmative, whether claimants are entitled to compensation, to what amount and from which of the respondents and manner of recovery ? OP claimant

iii) Whether respondent no.1 was not having legal and valid driving license at the time of accident ? OPR

iv) Relief.

3. The Tribunal, holding the driver of the offending vehicle to

have been driving the vehicle rashly and negligently, held the claimants entitled to compensation and awarded the following amount :

Sr. No.	**Heads**	**Amount**
1	Annual Income assessed	Rs.3,72,000/-
2	Less Deduction (as per citation Sarla Verma & Ors Vs Delhi Transport Corp & Anr 2009(3) Recent Apex Judgments 373)	1/4th Rs.93,000/-
3	Annual income after deduction	Rs.2,79,000/-
4	Multiplier (as per citation Sarla Verma & Ors Vs Delhi Transport Corp & Anr 2009(3) Recent Apex Judgments 373)	13
5.	Total annual income after applying multiplier.	Rs.36,27,000/-
6.	Loss of love and affection.	Rs.1,00,000/-
7.	Loss of consortium to widow (claimant no.1)	Rs.1,00,000/-
8.	Funeral expenses	Rs.25,000/-
9.	Medical Bills. (approximately)	Rs.16,546/-
	Total	**Rs.38,68,546/-**

4. Aggrieved by the same, two appeals have been preferred : one by the Insurance Company on the ground that it was a case of contributory negligence since it was a head-on collision as well as on the ground of quantum of compensation, and the second by the claimants for enhancement of compensation.

5. Learned counsel for the Insurance Company would contend that it was a case of contributory negligence as the accident was a head-on

collision between the vehicles. It is further the contention of the learned counsel that it was the motorcycle which was on the wrong side of the road and that the offending vehicle was being driven on the correct side of the road. It is further the contention of the learned counsel that no amount has been deducted towards income tax which ought to have been about Rs.1,000/- per month and that the amounts awarded under the head loss of love and affection/loss of consortium and funeral expenses are not as per the law laid down by 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]**.

6. Learned counsel for the claimants would contend that it was not a case of contributory negligence as the motorcycle was on the correct side of the road and it was the offending vehicle which came on to the wrong side of the road. It is further the contention of the learned counsel that no evidence was led by the Insurance Company or the driver and the owner of the offending vehicle to the contrary to show that the motorcycle was on the wrong side of the road. It is further the contention of the learned counsel that the eye-witness – Samson – who is also one of the claimants, stepped into the witness box as CW3 and clearly stated that the offending vehicle came on to the wrong side of the road and despite cross-examination nothing could be elicited from him. The learned counsel for the claimants is not in a

position to deny the fact that the income tax had not been deducted while ascertaining the income of the deceased and that the amounts awarded under the head loss of love and affection/loss of consortium and funeral expenses are not as per the law laid down by the Hon'ble Supreme Court. However, he has argued that no addition has been made towards loss of future prospects and being a permanent employee, 30% ought to have been added towards future prospects.

7. Heard.

8. In the present case not an iota of evidence was led by the owner and driver of the offending vehicle or by the Insurance Company to show that the offending vehicle was being driven on the correct side of the road and it was the motorcyclist who was at fault. The eye-witness – Samson – stepped into the witness box as CW3 and was subjected to lengthy cross-examination and despite the cross-examination, nothing could be elicited from him. In the absence of the any evidence to the contrary, the argument of the learned counsel for the Insurance Company that it was a case of contributory negligence deserves to be rejected.

9. The argument of the learned counsel for the Insurance Company that the income tax @ Rs.1,000/- per month (approximately) ought to have been deducted while ascertaining the income of the deceased deserves to be accepted. The Tribunal has erred in not deducting the amount of income tax. The argument of the learned counsel for the Insurance Company that the amounts awarded under the head loss of love and affection/loss of consortium and funeral expenses are not as per the law laid

down by the Hon'ble Supreme Court also deserves to be accepted.

10. The argument of the learned counsel for the claimants that no addition has been made towards loss of future prospects which ought to have been 30% also deserves to be accepted.

11. In the present case the Tribunal has assessed the income of the deceased as Rs.3,72,000/- per annum (Rs.31,000 x 12), however, the income tax has not been deducted and, hence, an amount of Rs.7,416/- is deducted towards income tax. Accordingly, income of the deceased is assessed as Rs.3,64,584/- per annum. The Tribunal has though rightly applied the deduction to the extent of $1/4^{th}$ and so as the multiplier of '13', however, no addition has been made towards future prospects and the deceased being a permanent employee, 30% addition would have been made towards future prospects. Further, the amounts awarded under the conventional heads and under the head 'loss of consortium' are 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 the claimants (wife and four children of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. An amount of Rs.16,546/- awarded towards medical bills is maintained. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	**Annual Income**	Rs.3,64,584/-
2	**Deduction 1/4th**	[Rs.364584-91146]=Rs.2,73,438/-
3	**Future Prospects - 30%**	[Rs.273438+82032]=Rs.3,55,470/-
4	**Multiplier - 13**	[Rs.355470x13]=Rs.46,21,110/-
5	**Loss of estate**	Rs.18,000/-
6	**Funeral expenses**	Rs.18,000/-
7 8	**Loss of consortium** (i) Parental (ii) Spousal's	 [Rs.48,000/-x4] =Rs.1,92,000/- Rs.48,000/- (Total Rs.2,40,000/-)
9	Medical bills	Rs.16,546/-
	Total Compensation	**Rs.49,13,656/-**

12. 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.

13. In view of the above discussion, the impugned award passed by the Tribunal is modified as discussed above. Both the appeals stand disposed off. Pending applications, if any, also stand disposed off.

25.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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