222. 2024:PHHC:000356

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. **FAO No.5033 of 2022 (O&M)**
Date of decision: 04.01.2024

The United India Insurance Company Limited ... Appellant

Versus

Radha Sharma and others ... Respondents

II. **FAO No.2095 of 2023 (O&M)**

Radha Sharma and others ... Appellants

Versus

Sunil and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Sanjiv Pabbi, Advocate, for the appellant in FAO No.5033 of 2022 and for respondent No.2 in FAO No.2095 of 2023.

Mr. Pawan Kumar Hooda, Advocate, for the appellants in FAO No.2095 of 2023 and for respondents No.1 to 3 in FAO No.5033 of 2022.

Mr. Deepak Kumar, Advocate, for respondent No.4 in FAO No.5033 of 2022 and for respondent No.1 in FAO No.2095 of 2023.

GURBIR SINGH, J.

CM No.7801-CII of 2023 in FAO No.2095 of 2023

Prayer in this application filed under Section 5 of Limitation Act for condonation of delay of 134 days in filing the present appeal.

For the reasons mentioned in the application, same is allowed and delay of 134 days in filing the appeal in FAO No.2095 of 2023 is condoned.

FAO No.5033 of 2022 and FAO No.2095 of 2023

1. By this common judgment, two appeals are being disposed of, one filed by the claimants i.e. **FAO No.2095 of 2023** titled as **Radha Sharma and others Versus Sunil and another** and the other is by the Insurance Company i.e. **FAO No.5033 of 2022** titled as **The United India Insurance Company Limited Versus Radha Sharma and others**, as they arise from the same award.

2. The brief facts as pleaded in the claim petition are that on 30.09.2020 at about 10:30 PM, Mukesh Kumar (since deceased) was coming from Bajrang Factory at Sanoli Road after his duty to his house on his motorcycle and when he reached near Power House of Beholi, some unknown vehicle, which was being driven in a rash and negligent manner by its driver, dashed against the motorcycle of Mukesh Kumar and as a result of which, he died at the spot.

3. After appreciating the evidence on record, the learned Tribunal awarded the compensation to the claimants in the following manner:-

1.	Monthly Income of deceased	Rs.15,000/-
2.	Deduction for personal and living expenses. (one third as there are three dependents)	Rs.5000/-

3.	Net Income	Rs.10000/-
4.	Yearly Income	Rs.10000 x 12 = Rs.1,20,000/-
5.	Multiplier (Age 55, multiplier of 11 as per Sarla Verma's case)	Rs.1,20,000 x 11 = Rs.13,20,000/-.
6.	Compensation on account of Future Prospects (25%)	Rs.3,30,000/-
7.	Loss of Estate	Rs.15000/-
8.	Funeral Expenses	Rs.15000/-
9.	Loss of Consortium	Rs.40000
	TOTAL	**Rs.17,20,000/-**

4. Learned counsel appearing on behalf of appellants-claimants in FAO No.2095 of 2023 has argued that the deceased was drawing salary of Rs.26,000/- per month and a salary certificate to that effect was also produced, but the learned Tribunal wrongly assessed the income of the deceased as Rs.15,000/- per month. Instead of 11 multiplier, it should have been taken as 12. Similarly, future prospects should have been calculated at 40% instead of 25%. Loss of estate and loss of funeral expenses should have been granted @ Rs.1 lac each instead of Rs.15,000/-. On the amount of award, rate of interest should have been taken as 12% per annum instead of 6% per annum.

5. On the other hand, learned counsel appearing on behalf of Insurance Company in FAO No.5033 of 2022 has argued that initially the FIR was lodged by the son of the deceased against unknown vehicle and name of driver was not mentioned in it. It was a hit-and-run case. However, it is on the basis of statement of PW3-Krishan, the offending tractor was involved and the driver was arrested after 56 days of

the registration of the FIR. It is submitted that the driver and the alleged offending vehicle were introduced in the accident just to claim compensation from the appellant-Insurance Company. It is argued that the future prospect at the age of 55 years should have been taken as 10% instead of 25%.

6. I have heard the submissions of learned counsel for the parties and have gone through the record.

7. From the arguments of both the sides, two issues emerged before this Court, one, that it is a hit-and-run case and the other issue is with regard to grant of future prospects.

8. The argument of learned counsel for the Insurance Company that the driver of the offending vehicle was implicated in the present case, after 56 days of the registration of FIR, in connivance with the claimants just to grab compensation from the Insurance Company, is without any merit as information regarding accident was given in time but since the FIR was initially registered against unknown vehicle, it took time for the police to investigate the matter. PW3-Krishan, who was the eyewitness to the accident, had stated that he noted down the number of offending tractor as HR-60-E-7896 which was being driven in a rash and negligent manner. Respondent No.1-Sunil, driver of offending vehicle, is facing trial on the ground that he caused the death of Mukesh Kumar by driving the offending vehicle in a rash and negligent manner.

Neither respondent No.1-Sunil stepped into the witness box nor any other witness is examined to rebut the evidence led by claimants. From the oral as well as documentary evidence led by the claimants, it was proved that the accident occurred due to rash driving of the offending vehicle by respondent No.1. The Tribunal has rightly held so and this Court too does not find any ground for interference on said issue.

9. As per ***National Insurance Company Limited Versus Pranay Sethi and others, 2017 SCC Online 1270***, the future prospects at the age of 55 years are to be added as 10% and not 25. As per said judgment, loss of estate and funeral expenses have been rightly taken as Rs.15,000/-. The multiplier of 11 at the age of 55 years is as per ***Sarla Verma Versus Delhi Transport Corporation, 2009(6) SCC 121***. The rate of interest on the amount of award has rightly been awarded by the learned Tribunal.

10. In view of above, the award is modified with regard to future prospect only. Instead of 25% future prospects of income, it is reduced to 10% as per the law laid down in ***Pranay Sethi and others***' ***case (supra)***. Thus, the appeal filed by the claimants in FAO No.2095 of 2023 seeking enhancement of compensation is dismissed and the appeal by the Insurance Company in FAO No.5033 of 2022 is partly allowed modifying the future prospect to the extent of 10% instead of 25%. The concerned court to calculate the amount of compensation accordingly

and said amount, if not paid, shall be paid by the appellant-Insurance Company along with interest within 30 days directly in the account of claimants.

11. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

January 4, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No