
(2022) 04 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 43 Of 2019

ICICI Lombard General Insurance Company Limited

APPELLANT

Vs

Darshana Devi And Others

RESPONDENT

Date of Decision : 02-04-2022

Acts Referred:

Indian Penal Code, 1860 — Section 279, 304A, 427

Citation : (2022) 04 SHI CK 0009

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Jagdish Thakur, R.K. Gautam, Rishabh Chandel

Judgement

Tarlok Singh Chauhan, J

1. Feeling aggrieved by the award passed by the learned Motor Accident Claims Tribunal-III, Kangra at Dharamshala (H.P.)(for short 'Tribunal') on 06.10.2018, the appellant-Insurance Company has filed the instant appeal.

2. Brief facts of the case are that on 10.11.2010 deceased- Ramesh Kumar was driving a Canter bearing registration No.PB-10-BG-5907 which was on its way from Jalandhar to Gorakhpur. The Canter was being followed by another truck bearing registration No. PB-10-BZ-7807. At about 9.15 P.M., when these vehicles reached near the place called Patarshikalan, one double decker carrier (Trolla container) bearing registration No. NL01-G-4081 after crossing the divider of the road collided with the Canter driven by the deceased. It was averred that Dev Kumar Seva (respondent No.2) was driving the vehicle bearing registration No. NL01-G-4081 in a rash and negligent manner and after visualizing the damage caused to the Canter of the deceased, he fled away from the spot by taking advantage of darkness. It was further averred that the deceased suffered multiple injuries on his head, as a result of which, succumbed to the injuries on the spot. The post mortem of the deceased was conducted at Civil Hospital, Fatehgarh. The matter was reported to the police and FIR No. 51 of 2010 under

Sections 279, 304-A and 427 IPC came to be registered against respondent No.2 at Police Station, Badali Allah Singh District Fatehgarh Sahib. It was also averred that deceased Ramesh Kumar was a driver by profession and used to earn Rs.10,000/- per month. Petitioners in the petition filed before the learned Tribunal had claimed compensation of Rs.26,60,000/-alongwith interest at the rate of 12% per annum.

3. Respondent No.1 before the Tribunal contested the petition by filing reply wherein preliminary objections regarding maintainability, locus-standi, cause of action and jurisdiction, were taken. On merits, it was averred that there was no negligence on the part of respondent No.2 and as such the petitioners are not entitled for any compensation.

4. Respondent No.3 (appellant herein) filed separate reply and took preliminary objection to the effect that respondent No.2 was not holding a valid and effective driving licence and the vehicle in question was being plied in contravention of the terms and conditions of the Insurance Policy. On merits, the income of the deceased was denied and it was averred that no accident took place due to rash and negligent driving of respondent No.2.

5. On the pleadings of the parties, the learned Tribunal on 25.08.2018 framed the following issues:-

"1. Whether the deceased Ramesh Kumar died in a motor vehicle accident which took place on 10.11.2010 around 9.15 P.M. at place GT Road Patراسي Kalan Rural, District Fatehgarh Sahib, Punjab within the jurisdiction of police post Badali Ala Singh, District Fatehgarh Sahib Punjab by the rash and negligent driving of respondent No.2 Shri Dev Kumar Seva while driving vehicle bearing registration No. NL01-G-4081 on a public way? OPP.

2. If the issue No.1 is proved in affirmative, whether the petitioners are entitled for the grant of compensation, if so, to what amount and from whom?OPP.

3. Whether the respondent No.2 was driving the vehicle bearing registration No. NL01-G-4081 without any valid and effective driving licence on the alleged date of accident i.e. 10.11.2010? OPR-3

4. Whether the vehicle was driven by respondent No.2 in contravention of the terms and conditions of the insurance policy on the alleged date of accident i.e. 10.11.2010? OPR-3.

5. Relief."

6. After recording evidence and evaluating the same, the learned Tribunal awarded compensation to the tune of Rs.20,40,000/- along with interest @ 9% per annum from the date of filing of the petition till its realization from respondent No.3.

7. I have heard the learned counsel for the parties and have gone through the records of the case.

8. At the outset, it needs to be noticed that the appellant-Insurance Company has assailed the award only on the quantum of the award, as is evident from the order passed by this Court on 16.03.2022, which reads as under:-

"The instant case has been listed before this Court as the appellant has failed to take steps for the service of respondents No. 4 and 5. However, the Court finds from the record that probably respondents No. 4 and 5 i.e. owner and driver of the vehicle, may not be a necessary party in the peculiar facts and circumstances of the case, as only the quantum of the award has been assailed. Therefore, the appellant, at this stage, is exempted from filing correct address of these respondents. List the appeal for final hearing on 23.03.2022."

9. As regards quantum, the learned counsel for the appellant- Insurance Company is mainly aggrieved by the findings recorded by the learned Tribunal whereby it fixed the income of the deceased to be Rs.10,000/- per month. Such findings are recorded in para-21 of the award and the same reads as under:-

21. Smt. Darshana Devi (PW-1) deposed that the deceased was employed as driver with Virk Road Carriers and he used to earn Rs.10,000/- per month. The contents of the aforesaid FIR (Ex.P1 read with Ex. PW-1/A) also reveals that the deceased was driver of the Canter, bearing registration No. PB-10-BZ-7867, and on the fateful day he on this Canter was bound for Gorakhpur (UP). Thus, the version of Smt. Darshana Devi stands corroborated that her husband was driver by profession and used to drive the Goods vehicle, as he was carrying loads of wheat in his Canter on the relevant day. There is no contrary evidence on the record to discredit the testimony of Smt. Darshana Devi (PW-1). The Hon'ble High Court of H.P. in Sanjokta Devi and Ors. v. Himachal Road Transport Corporation and another 2015(3) Him LR 1737, held that in today's scenario even an unskilled labourer is earning not less than Rs.6,000/- per month. Therefore, it could readily be assumed that the professional driver of Goods carriage would have easily earned Rs.10,000/- per month in the year 2010. Thus, this tribunal take monthly income of Shri Ramesh Kumar as Rs.10,000/- and per year it will be Rs.1,20,000/-."

10. To say the least, the findings recorded by the learned Tribunal are totally perverse as admittedly there was no contemporaneous official or any other records produced by the claimants to prove the income of the deceased despite the fact that he (deceased) was stated to be working as a driver with Virk Road Carriers, who in normal course of their business would be maintaining complete records of their employees, more particularly, relating to salary.

11. The uncorroborated testimony of the deceased namely Smt. Darshana Devi could not have been relied upon by the learned Tribunal to fix the salary of deceased at Rs.10,000/- per month. In the given circumstances, the deceased being a driver could at best be held to be a highly skilled (Upper) in the Public Motor Transport Industries and as per minimum wages in Punjab with effect from 01.09.2010 to 28.02.2011, his wages could be taken Rs. 187.1/- per day or

Rs.5,613/- per month.

12. Since, other findings regarding age of the deceased, future prospects, deduction to be made towards personal living and expenses of the deceased, multiplicand and the multiplier have not been disputed or rather assailed specifically by the appellant, therefore, the same as applied by the learned Tribunal are upheld.

13. The comparative chart of award passed by the learned Tribunal as also by this Court is given below:-

Sr. No.

Award passed by the Tribunal

Modified Award by this Court

Details/Particulars

Details/Particulars

(i)

Income taken by the Tribunal : Rs.10,000/- per month.

Income taken by High Court: Rs.5613/- per month i.e. i.e. Rs. 187.10/- per day as per Minimum Wages.

(ii)

Addition on account of future prospects @ 40% : $10,000 \times 40 / 100 = \text{Rs.}4,000/-$.

Addition on account of future prospects @ 40% = $\text{Rs. } 5613 \times 40 / 100 = \text{Rs.}2245/-$.

(iii)

Total Income: $\text{Rs.}10,000 + \text{Rs.}4,000/- = \text{Rs.}14,000/-$.

Total Income : $\text{Rs.}5613 + 2245 = 7858/-$.

(iv)

1/4th deduction on account of personal expenses: $\text{Rs.}14,000 / 4 = \text{Rs.}3,500/-$

1/4th deduction on account of personal expenses = $\text{Rs.}7858 / 4 = \text{Rs.}1964/-$

(v)

Loss of Dependency: $\text{Rs.}14,000 - 3500 = \text{Rs.}10,500/-$

Loss of Dependency : $\text{Rs.}7858 - 1964 = \text{Rs.}5894/-$

(vi)

Annual Loss : $\text{Rs.}10,500 \times 12 = \text{Rs.}1,26,000/$

Annual Loss : $\text{Rs.}5894 \times 12 = \text{Rs.}70,728/-$

(vii)

Multiplier of 15 : Rs.1,26,000x15 =Rs.18,90,000/-

Multiplier of 15 : Rs.70,728x 15 = Rs.10,60,920/-

(viii)

Funeral Expenses: Rs. 15,000/- Loss of Estate : Rs. 15,000/- as per National Insurance Co. Ltd. vs. Pranay Sethi and others.

Loss of Consortium to respondent No.1= Rs. 40,000/-

Filial Consortium to respondents No.2 and 3 : @ Rs.40,000/- each = Rs.80,000/- as per Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru.

Funeral Expenses: Rs. 15,000/-

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National Insurance Co. Ltd. vs. Pranay Sethi and others.

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(ix)

Total: Rs.20,40,000/- with interest @ 9% per annum

Total: Rs.12,10,920/- with interest @ 7.5% per annum.

14. As regards the rate of interest, the same is reduced to 7.5% per annum as against 9% per annum awarded by the learned Tribunal in view of the decreasing trend in the rate of interest in the present scenario.

15. In view of the aforesaid discussion, the appeal filed by the appellant-Insurance Company is partly allowed and the award passed by the learned Tribunal on 06.10.2018 is modified to the extent that the claimants would now be entitled to a total compensation of Rs. 12,10,920/- instead of Rs.20,40,000/- along with interest @ 7.5% per annum, to be apportioned amongst them, as ordered by the learned Tribunal, from the date of filing of the etition till its realization. The parties are left to bear their own costs. Pending application(s), if any, also stand disposed of.