IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

210 **FAO-4181-2008(O&M)**
Date of Decision:17.09.2025

Reliance General Insurance Co. Ltd. ...Appellant

Versus

Mamta Rani and others ... Respondents

2. **FAO-863-2009(O&M)**

Mamta Rani and others ...Appellants

Versus

Rakesh Kumar and another ... Respondents

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Subhash Goyal, Advocate
Mr. Vipul Sharma, Advocate
for the appellant in FAO No.4181 of 2009 and
for respondent No.2 in FAO No.863 of 2009.

Mr. Tanmoy Gupta, Advocate
for appellants in FAO No.863 of 2009 and
for respondents No.1 to 6 in FAO No.4181 of 2009.

Mr. Ankur Malik, Advocate
Mr. Y.P. Malik, Advocate
for respondent No.1 in FAO No.863 of 2009 and
for respondent No.7 in FAO No.4181 of 2008.
***

AMARINDER SINGH GREWAL, J. (ORAL)

1. This order shall dispose of two appeals, i.e. FAO Nos. 4181 of 2008 and FAO No. 863 of 2009, as they have arisen out of the same award dated 03.09.2008 passed by the learned Motor Accidents Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal').

2. FAO No. 4181 of 2008 has been preferred by the appellant-insurance company, seeking setting aside of the impugned Award dated 03.09.2008 passed by the learned Tribunal, whereas, FAO No. 863 of 2009 has been preferred by the

appellants-claimants, seeking enhancement of the compensation granted vide aforesaid impugned award. For the sake of convenience, facts are being enumerated from FAO No.4181 of 2008.

3. Succinctly, the facts of the case are that on 19.08.2007, one Hazara Ram (deceased) was travelling on his motorcycle bearing registration No. HR-26S-2045 and had stopped near Raj Nagar turn on the Gurgaon-Jaipur Highway, where his colleague, Ramesh Dadwal, was waiting for a vehicle. In the meantime, a Tata-407 vehicle bearing registration No. HR-12-GA-0665 (hereinafter referred to as "the offending vehicle"), being driven rashly, negligently and at a high speed by respondent No.7, came from Gurgaon side and hit the motorcycle from behind, resulting in death of Hazara Ram. Pursuant thereto, FIR No. 315 dated 19.08.2007 under Sections 279 and 304-A of Indian Penal Code, 1860 was registered at Police Station Sadar, Gurgaon. The offending vehicle was owned by respondent No.7 himself and stood duly insured with the appellant-Insurance Company. Occasioned by the same, claim petition was preferred by legal representatives of the deceased where the learned Tribunal awarded compensation of Rs.7,46,800/- to respondents No.1 to 6-claimants being widow, minor children and parents of the deceased, payable by appellant-insurance company and respondent No.7 jointly and severally. Aggrieved by the same, aforesaid appeals have been preferred before this Court.

4. Learned counsel for the appellant- insurance company in FAO No.4181 of 2008 and for respondent No.2 in FAO No.863 of 2009 submits that the impugned award dated 03.09.2008 passed by the learned Tribunal, fastening joint and several liability upon the appellant, is wholly illegal and unsustainable in law. It is urged that the learned Tribunal has misread the pleadings and evidence and overlooked the fact that the insured had obtained the cover note for the offending vehicle by

issuing a cheque towards premium, which was dishonored for insufficiency of funds. The appellant had, therefore, cancelled the policy *ab initio* and duly intimated the insured on 24.08.2007, prior to the award. Hence, in such circumstances, there existed no valid contract of insurance and consequently, the appellant-insurance company was not liable to indemnify the insured. It is further contended that fastening liability upon the insurance company despite absence of consideration is contrary to settled principles of contract law and the learned Tribunal has erred in awarding compensation of ₹7,46,800/- against the appellant-insurance company. Therefore, he prays for setting aside of the impugned award passed by the learned Tribunal as well as dismissal of the cross-appeal filed by the respondent-claimants.

5. Learned counsel for the appellants-claimants in FAO No.863 of 2009 and for respondents No.1 to 6 in FAO No.4181 of 2009 contends that though the learned Tribunal rightly held that the accident occurred on account of rash and negligent driving of respondent No.7 but it gravely erred in awarding only ₹7,46,800/- as compensation against the claim of ₹35,00,000/-. It is urged that the learned Tribunal wrongly assessed the income of the deceased at ₹7675/- per month despite cogent evidence on record, including the salary certificate (Ex.P-6) and Income Tax Form-16 (Ex.P-7), which established his monthly earnings at ₹16,239/- as a Senior Operator with M/s Sunbeam Auto Ltd. It is further contended that the learned Tribunal applied a multiplier of 12 instead of 15, and made an excessive deduction of one-third towards personal expenses, whereas, keeping in view that the deceased left behind a widow, aged parents and three minor children, the appropriate deduction could not be more than one-fifth. Additionally, the learned Tribunal has failed to grant any compensation for loss of consortium, mental shock,

agony and loss of companionship, thereby rendering the award contrary to settled principles of law. On a correct assessment, the compensation ought to have been computed at not less than ₹32,00,000/- with interest, and the award dated 03.09.2008, thus, deserves to be suitably modified. It is also contended that in a case where the accident had occurred before cancellation of the policy, insurance company is liable to satisfy award of compensation and thus, prays for dismissal of the appeal preferred by the insurance company.

6. Having heard the learned counsel for the parties and after perusing the paper book with their able assistance, this Court is of the considered view that the contentions raised on behalf of the appellant-Insurance Company do not merit acceptance. The material on record clearly establishes that the accident in question occurred on account of rash and negligent driving of respondent No.7, resulting in the death of Hazara Ram. The plea of the Insurance Company regarding dishonour of the cheque towards premium and consequent cancellation of the policy cannot absolve it from liability towards third-party claimants, in view of the settled position of law that statutory liability under the Motor Vehicles Act subsists notwithstanding *inter se* disputes between the insurer and the insured. The Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Laxmamma and others (2012) 5 SCC 234*** has held that where the insurance policy was obtained on payment of premium through cheque and the same dishonoured and the accident occurred before cancellation of the policy, insurance company is still liable to satisfy the award of compensation by reason of provisions of Sections 147(5) and 149 (1) of the Motor Vehicles Act, 1988. Thus, the Tribunal was justified in fastening liability upon the Insurance Company.

7. At the same time, this Court finds merit in the submissions of learned counsel for the appellants-claimants that the Tribunal erred in assessing the income of the deceased at ₹7,675/- per month, ignoring the duly proved salary certificate (Ex.P-6) and Income Tax Form-16 (Ex.P-7) reflecting his monthly income at ₹16,239/-. The reasoning of the learned Tribunal that total emoluments of Rs.16,239/- included Rs.2303/- as HRA, Rs.450/- conveyance allowance, Rs.75/- as attendant, Rs.195/- as washing allowance, Rs.940/- as VDA, Rs.461/- as medical allowance and Rs.640/- as LTA, which cannot be treated as part of the income, is wholly erroneous. The Hon'ble Supreme Court in the judgment passed in ***Raghuvir Singh Matolya v. Hari Singh Malviya*, (2009) 15 SCC 363** has held as under:-

> ***"****6. Dearness allowance, in our opinion, should form a part of the income. House rent allowance is paid for the benefit of the family members and not for the employee alone. What would constitute an income, albeit in a different fact situation, came up for consideration before this Court in National Insurance Co. Ltd. v. Indira Srivastava [(2008) 2 SCC 763 : (2008) 1 SCC (Cri) 550] wherein it was held: (SCC p. 772, paras 19-21)*
>
> *"19. The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.*
>
> *20. The term 'income' in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn.) has been defined as under:*
>
> *'(iii) the value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or a person who has substantial interest in the company, and any sum paid by such company in respect of any obligation, which but for such*

payment would have been payable by the director or other person aforesaid, occurring or arising to a person within the State from any profession, trade or calling other than agriculture.'

It has also been stated:

"Income" signifies "what comes in" (per Selborne, C., Jones v. Ogle [(1861-73) All ER Rep 918]). "It is as large a word as can be used" to denote a person's receipts (per Jessel, M.R., Huggins, ex p., Re [51 LJ Ch 935]). Income is not confined to receipts from business only and means periodical receipts from one's work, lands, investments, etc. Secy. to the Board of Revenue, Income Tax v. Al. Ar. Rm. Arunachalam Chettiar & Bros. [AIR 1921 Mad 427] Ref. Vulcun Insurance Co. Ltd. v. Corpn. of Madras [AIR 1930 Mad 626 (2)] .'

21. If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income tax or professional tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute."

7. We, therefore, are of the opinion that "dearness allowance" and "house rent allowance" payable to the deceased should have been included for determining the income of the deceased and consequently the amount of compensation."

8. In the judgment passed by the Hon'ble Supreme Court in ***National Insurance Company Ltd. v. Nalini and Ors***. Petition for Special Leave to Appeal (C) No. 4230/2019 on 11.07.2024, it has been held that allowances under the heads of transport allowance, house rent allowance, provident fund loan, provident fund and special allowance ought to be added while considering the basic salary of the victim/deceased to arrive at the dependency factor.

9. Therefore, the basic salary of the deceased minus allowance was Rs.11,175/- per month and if allowances towards HRA (Rs.2303/-) and medical allowance (Rs.461/-) are added in the same, his monthly salary was Rs.13,939/- per month. Since the deceased was aged 45 years at the time of his death, pursuant to the ratio in ***National Insurance Co. Ltd. v. Pranay Sethi (2017) 16 SCC 680*****,** future prospects of 30% (age 45) ought to have been provided, which enhanced the annual income of deceased to ₹2,17,448.40. After deducting 1/4th for personal expenses (appropriate where dependants number 4–6), the annual net loss is ₹1,63,086.30. Applying the multiplier of 14 (age 41–45), the loss of dependency is assessed at ₹22,83,208.20/-. Adding conventional heads, after making addition of 10% in every three years i.e. consortium ₹48,400×6 = ₹2,90,400/- loss of estate ₹18,000/-, and funeral expenses ₹18,000/-, total amount of compensation results in ₹26,09,600/- (rounded off).

10. Accordingly, on a recalculation, the claimants are held to be entitled to compensation of Rs.26,09,600/-. The award of the learned Tribunal dated 03.09.2008 is, thus, modified to the aforesaid extent. The enhanced amount shall carry interest at the rate of 9% per annum from the date of filing of the claim petition till realization.

11. In view of the aforesaid facts and circumstances, FAO No. 4181 of 2008 filed by the insurance company is dismissed; whereas, FAO No.863 of 2009 filed by the appellants-claimants is allowed.

(**AMARINDER SINGH GREWAL**)
JUDGE

September 17, 2025
Pankaj*

Whether speaking/reasoned : Yes
Whether reportable : Yes