Before Lisa Gill, J.

GOPI RAM AND ANOTHER—*Appellants*

versus

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED—*Respondents*

FAO No. 9052 of 2014

December 11, 2018

Motor Vehicles Act, 1988 Section 166—Accident—Trailer/trolley attached to the tractor is not sufficient to absolve the insurance company of its liability—until proved to be used for a commercial purpose—Finding of the tribunal set aside—Insurance company held liable to indemnify the insured.

Held that learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 22.10.2013 due to rash and negligent driving of the offending tractor bearing registration No HR 35F 9453 by its driver Gopi Ram. Learned Tribunal awarded a sum of Rs2,09,000 with interest at the rate of 7.5percent per annum from the date of filing of the claim petition till date of actual realization of the award. Income of the deceased was assessed as Rs4,500 per month. Deduction of 50 percent was effected as he was a bachelor. Multiplier of 07 was applied keeping in view the age of the father of the appellant. Additionally, a sum of 1,00,000 on account of loss of love and affection was awarded besides a sum of Rs 10,000 account of funeral expenses and last rites. Learned counsel for the appellants that is owner and driver of the offending vehicle vehemently argues that the learned Tribunal has wrongly held the present appellants liable to pay compensation though the offending vehicle was duly insured with the insurance company.

(Para 5)

Further held that learned counsel for the appellants submits that income of the deceased assessed as Rs 4,500 per month by the learned Tribunal is incorrect as he is proved to be working as a mason earning Rs 12,000 per month. Furthermore, in terms of judgment of the Hon'ble Supreme Court in National Insurance Company Limited versus Pranay Sethi and others 2017 4 RCR Civil 1009, increment on account of future prospects at the rate of 40 percent should be afforded. Multiplier of 18 should have been applied. Learned counsel fairly states that compensation on account of loss of love and affection may be

reworked. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

(Para 7)

Further held that learned counsel for the respondent insurance company submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Thus, impugned award dated 21.05.2014 be upheld.

(Para 8)

P.R. Yadav, Advocate
for the appellants (in FAO-9052-2014)
for respondents No. 1 and 2 (in FAO-6129-2014)

Ashwani Talwar, Advocate
for respondent No. 1 (in FAO-9052-2014)
for respondent No. 3 (in FAO-6129-2014)

Lokesh Sharma, Advocate for
Ashwani Bhardwaj, Advocate
for respondents No. 2 and 3 (in FAO-9052-2014)
for the appellants (in FAO-6129-2014)

LISA GILL, J.

(1) This judgment shall dispose of FAO No. 6129 of 2014 (Somdutt and another Versus Gopi Ram and others) and FAO No. 9052 of 2014 (Gopi Ram and another Versus Bajaj Allianz General Insurance Company Limited), which arise out of a common award dated 21.05.2014 passed by the learned Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal').

(2) FAO No. 9052 of 2014 has been filed by the driver and owner of the offending vehicle challenging their liability to pay compensation in this case.

(3) FAO No. 6129 of 2014 has been filed by the claimants for enhancement of the compensation awarded by the learned Tribunal on account of death of Anil Kumar vide award dated 21.05.2014.

(4) Brief facts necessary for adjudication of the case are that claimants i.e. parents of the deceased filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Anil Kumar on 23.10.2013 in a motor vehicle accident took place on 22.10.2013 caused due to driving of the offending vehicle tractor bearing registration No. HR-35F-9453 by Gopi Ram in a rash and negligent manner. It was averred that Anil Kumar was going towards

his village Fatehpur from Mohindergarh on his motorcycle. When he reached near Ahirwala College, near the canal, offending vehicle tractor bearing registration No. DIG-5427 hit against the motorcycle. As a result thereof, Anil Kumar sustained grievous fatal injuries. He was shifted to Government Hospital, Mandi Ateli and thereafter referred to Government Hospital, Narnaul where he succumbed to his injuries on 23.10.2013. The deceased, aged 20 years at the time of the accident was stated to be earning a sum of Rs. 12,000/- per month while doing tile tracing and diary farming work.

(5) Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 22.10.2013 due to rash and negligent driving of the offending tractor bearing registration No.HR-35F-9453 by its driver–Gopi Ram. Learned Tribunal awarded a sum of Rs. 2,09,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as Rs. 4,500/- per month. Deduction of 50% was effected as he was a bachelor. Multiplier of 07 was applied keeping in view the age of the father of the appellant. Additionally, a sum of Rs. 1,00,000/- on account of loss of love and affection was awarded besides a sum of Rs. 10,000/- on account of funeral expenses and last rites. Learned counsel for the appellants i.e. owner and driver of the offending vehicle vehemently argues that the learned Tribunal has wrongly held the present appellants liable to pay compensation though the offending vehicle was duly insured with the insurance company.

(6) Aggrieved of the quantum of compensation, claimants have filed this appeal.

(7) Learned counsel for the appellants submits that income of the deceased assessed as Rs. 4,500/- per month by the learned Tribunal is incorrect as he is proved to be working as a mason earning Rs. 12,000/- per month. Furthermore, in terms of judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited*** versus ***Pranay Sethi and others***[1] increment on account of future prospects at the rate of 40% should be afforded. Multiplier of 18 should have been applied. Learned counsel fairly states that compensation on account of loss of love and affection may be reworked. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

(8) Learned counsel for the respondent - insurance company

[1] 2017 (4) RCR (Civil) 1009

submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement. Thus, impugned award dated 21.05.2014 be upheld.

(9) I have heard learned counsel for the parties and have gone through the available file.

(10) There is no dispute that Anil Kumar lost his life in a motor vehicle accident, which took place on 22.10.2013 caused due to the rash and negligent driving of tractor bearing registration No.HR-35F-9453 driven by Gopi Ram. Finding of the learned Tribunal on this issue has attained finality.

(11) It is a matter of record that the deceased was 20 years old at the time of the accident. He is claimed to be a skilled mason engaged in tile tracing and doing dairy farming, thus, earning a sum of Rs. 12,000/- per month. There is, however, no evidence on record to reflect that deceased Anil Kumar was earning Rs. 12,000/- per month. At the same time, it cannot be lost sight of that even the minimum wage of an unskilled labourer in the State of Haryana in the year 2013 was Rs. 5341/- per month. Thus, learned Tribunal has erred in assessing income of the deceased to be Rs. 4500/- per month. Income of the deceased is, accordingly, assessed as Rs. 5,350/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), increase on account of future prospects at the rate of 40% (Rs. 2140/-) has to be afforded, as the deceased was 20 years old at the time of accident, which takes income of the deceased to Rs. 7490/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of **Sarla Verma** (supra), 50% deduction has been correctly applied as the deceased was a bachelor, thereby rendering income of the deceased to be Rs. 3745/-(7477-3745). Multiplier of 18 is required to be applied, age of the deceased being 20 in view of the judgment of the Hon'ble Supreme Court in ***Munna Lal Jain*** versus ***Vipin Kumar Sharma***[2]. Applying a multiplier of 18, dependancy of the claimants is, therefore, assessed as Rs. 8,08,920/- (Rs. 3745 x12x18*)*. The claimants are also entitled to Rs. 15,000/- each for funeral expenses and loss of estate. In terms of the judgment of the Hon'ble Supreme Court in ***Magma General Insurance Company Limited*** versus ***Nanu Ram Alias Chuhru Ram and others*** (Civil Appeal No. 9581 of 2018), appellants i.e. parents of the deceased are entitled to Rs. 40,000/- each on account of loss of parental consortium instead of Rs. 1,00,000.Claimants are, thus,

[2] (2015) 6 SCC 347

entitled to total compensation of Rs. 9,18,920/- detailed as under:-

Loss of dependency (Rs. 3745 x 12 x 8)	Rs. 8,08,920/-
Loss of parental consortium(40,000 x 2)	Rs. 80,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-
Total	Rs. 9,18,920/-

(12) The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

(13) Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

FAO No. 9052 of 2014

(14) Learned Tribunal concluded that the tractor trolley was being used for commercial purposes and the driving licence (Ex.PW2/B) held by the driver cannot be treated to be a valid licence as its driver cannot not ply a vehicle used for commercial purposes. It is held by the learned Tribunal that there is a basic breach of terms and conditions of the insurance policy, therefore, insurance company was exonerated from its liability to pay the compensation.

(15) Learned counsel for the appellants i.e. owner and driver of the offending vehicle vehemently argues that the learned Tribunal has wrongly held the present appellants liable to pay compensation though the offending vehicle was duly insured with the insurance company. It is submitted that there is no evidence on record that the tractor trolley was being used for commercial purposes. The insurance company has failed to lead any evidence to prove the same. Furthermore, insurance company, it is urged, cannot be absolved of its liability on the ground that the trailer/trolley was attached with the tractor. The same is not a ground for absolving the insurance company as the tractor trolley was being used for agricultural/ personal purposes.

(16) Learned counsel for the insurance company with equal vehemence submits that the insurance company cannot be held liable to pay compensation in this case. First and foremost, it is only the tractor

which is insured by the insurance company and not the trolley. Moreover, it is proved on record that the tractor trolley was being used for carrying small stones (rohri) and, thus, was used for commercial purposes. He relies upon the judgment of the Hon'ble Supreme Court in ***Pappu and others*** versus ***Vinod Kumar Lamba and another***[3] to submit that foundational facts have not been pleaded or proved by the driver and owner, therefore, the insurance company has been rightly absolved of its liability. It is, thus, prayed that this appeal be dismissed.

(17) It is to be noticed that much reliance has been placed by learned counsel for the insurance company on the testimony of RW4 Gaurav Parashar, Senior Executive (Legal), Bajaj General Insurance Company Limited to urge that the tractor trolley, which was loaded with small stones was being used for commercial purpose. I have perused affidavit (Ex.RW4/F) tendered by RW4 as well as his cross examination. In affidavit (Ex. RW4/F), it is stated by RW4 that as per the eye witness PW3, the tractor trolley was loaded with small stones, therefore, RW4 stated that the tractor was not being used for agricultural purpose. He stated that the trolley was not insured with the insurance company. In cross examination, RW4 Gaurav Parashar specifically admitted that he could not say whether the goods and articles carried in the tractor trolley were being used for personal purpose or not and it is further admitted that details of the premium are not bifurcated.

(18) There is indeed no evidence on record to suggest that the said tractor trolley was being used for commercial purpose. To arrive at such conclusion merely on the strength that the trolley was loaded with small stones (rohri) is not justified in any manner. There is nothing on record to indicate that the tractor trolley was being used for a commercial purpose. The Hon'ble Supreme Court in ***Fahim Ahman and others*** versus ***United India Insurance Co. Ltd. and others***[4] has held that merely because a tractor trolley was carrying sand would not mean that the tractor was being used for commercial purpose. The insurance company in that case was held liable to pay compensation while holding that there is no breach of conditions of the policy. It is specifically held in **Fahim Ahmad's** case (supra) that the insurance company not only has to plead the breach of terms and conditions of the policy but also substantiate the same by adducing positive evidence in respect of the same. In the present case, though it has been pleaded by

[3] 2018 (2) RCR (Civil) 42
[4] 2015 (1) SCC (Civil) 258

the insurance company in its written statement that the vehicle is being used for commercial purpose, there is no such evidence on record. The judgment of the Hon'ble Supreme Court in the case of **Pappu** (supra) in the present factual matrix would, thus, not be applicable. Reference can be gainfully made to the judgment of the Hon'ble Supreme Court in ***Lakhmi Chand*** versus ***Reliance General Insurance***[5] to the extent that breach of insurance policy and its causal relationship with the accident has to be proved by the insurer.

(19) There is further no merit in the argument raised by learned counsel for the insurance company that as a trolley was attached with the tractor, the insurance company is not liable to pay the compensation. Mere fact that trailer/trolley was attached to the tractor by itself is not sufficient to absolve the insurance company of its liability. Reference in this regard can be made to the judgments of the Hon'ble Supreme Court in ***Nagashetty*** versus ***United India Insurance Company Limited***[6].

(20) Keeping in view the facts and circumstances of the case, finding of the learned tribunal on this aspect is set aside and it is held that the insurance company is liable to indemnify the insured and pay the compensation to the claimants.

(21) FAO No. 9052-2014 is, accordingly, allowed and with the modification in the amount of compensation as detailed, FAO-6129-2014 is disposed of.

Payel Mehta

[5] (2016) 3 SCC 100
[6] 2001 AIR (SC) 3356