Before Tribhuvan Dahiya, J.

UNITED INDIA INSURANCE COMPANY LIMITED—*Petitioner*

versus

JAGBIR SINGH AND OTHERS—*Respondents*

FAO No. 77 of 2017

September 09, 2022

A. Motor Vehicles Act, 1988—Ss. 166 and 173—Rash and negligent driving by offending vehicle—Death in accident—Driver and owner and Insurance company to pay compensation—Challenged—Plea of false involvement of offending vehicle/tractor in accident as vehicle number not mentioned in FIR—Held, mere non-mentioning registration number of offending vehicle in FIR lodged at time of accident no ground to allege false involvement of vehicle for purpose of filing claim petition—No other evidence has come on record which can in any way, even prima facie show that there is any collusion between claimants and driver and owner of vehicle in question.

Held, that this argument of learned counsel for the appellant has no merit, since pursuant to lodging of the FIR (exhibit P-2) a report under Section 173 Cr.P.C. (exhibit P-5) was filed against the driver of the offending vehicle who was facing criminal prosecution. Law in this regard is well settled, where the driver has been charge-sheeted under Section 173 Cr.P.C., it is safe to conclude that prima facie the accident occurred on account of his rash and negligent driving. Reference in this regard can be made to judgment of this Court in Girdhari Lal v. Radhey Sham and Others, 1993 (2) PLR 109. Besides, mere non- mentioning the registration number of the offending vehicle in the FIR lodged at the time of the accident, is no ground to alleged that it is a case of false involvement of a vehicle for the purpose of filing claim petition. No other evidence has come on record which could, in any way, even prima facie indicate that there has been any collusion between the claimants and the driver and owner of the vehicle in question. There can be many valid reasons for not mentioning registration number of the offending vehicle in question in the FIR that is lodged soon after the accident. The informer may not be able to recollect the exact registration number of the offending vehicle, since attention of the persons present at the time of accident is to save the injured, and rightly so. The police during investigation if comes to conclusion that a

particular vehicle was involved in the accident and files a report under Section 173 Cr.P.C. on that basis, it dispels any notion of collusion.

(Para 9)

B. Motor Vehicles Act, 1988, Sections 166 and 173—Plea of driving without licence—Held, merely because deceased did not have licence, not sufficient to conclude negligence or that it was case of contributory negligence—No evidence on record which can prima facie point towards any negligence on part of deceased Kamal, therefore no contributory negligence on his part.

Held, that it has further been argued by learned counsel for the appellant that the deceased Hitesh @ Monu, who was driving the motorcycle in question, was 17 years of age at the time of the accident, as has been stated by PW- 1 Jagbir/respondent No.1 in his cross examination before the Tribunal. Therefore, he could not have been issued a valid driving licence to drive the motorcycle. This act of driving without a licence itself establishes his own negligence. The argument also lacks merit. Merely because the deceased was not having any licence, is in itself not sufficient to conclude that he was negligent in causing the accident, or that it was a case of contributory negligence, as has been argued by learned counsel for the appellant. It has been clearly held by the Tribunal that no evidence was led to prove the fact that the deceased himself was negligent in driving and that the accident took place on that account. Besides, it is no longer res integra that in case a driver was driving the vehicle without a licence, that by itself would not lead to a finding of negligence as regards the accident. It has been held by Hon'ble Supreme Court in Sudhir KumarRana v. Surinder Singh, (2008) 12 SCC 436 as under:

> 9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

In the light of aforesaid proposition of law, coupled with the fact that

there is no evidence on record which could even prima facie point out any negligence on the part of the deceased Kamal, it cannot be held that there is any contributory negligence on his part.

(Para 10)

C. Motor Vehicles Act, 1988—Ss. 166 and 173—Determination—Income of deceased—As per respondents/claimant's own case, deceased was labourer by profession—Therefore, in absence of evidence on record, income of deceased rightly assessed.

Held, that it has next been argued by learned counsel for the appellant that the amount of compensation has been wrongly assessed by the Tribunal, in as much as, the deceased' s income has been taken to be that of a skilled daily wager. Whereas, as per the respondents/claimant's own case, the deceased was a labourer by profession. Learned counsel for the appellant has referred to a notification by the Government of Haryana to indicate that the minimum wage of an unskilled labour at the time of accident. However, it is not disputed that no evidence was led to establish minimum wage of unskilled labour before the Tribunal. Therefore, in the absence of evidence on record, this Court is not inclined to interfere in the assessed income at this stage.

(Para 11)

D. Motor Vehicles Act, 1988—Ss 166 and 173—Cross objections by claimants—Compensation towards loss of sole bread earner—Enhancement of—Held, as per law, deduction should be of one half of his income.

Held, that Learned counsel for the Cross Objectors/respondents in FAO No. 77 of 2017 has argued that the compensation awarded to the claimants on account loss of their sole bread earner is on a lower side, as no compensation has been awarded towards loss of consortium and future prospects. Per contra, it has last been argued by learned counsel for the appellant that the deduction of 1/3rd towards personal expenses of the deceased for assessing the compensation is also wrong, since the deceased was a bachelor. As per law, the deduction should be of one half of his income.

(Para 12)

E. Motor Vehicles Act, 1988, Ss.166 and 173—Deduction of 1/3rd from the deceased's income towards personal expenses—Challenged—Since number of dependents/claimants/respondents is three, who are parents and minor brother of deceased—Therefore, in

view of case of Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others, (2018) 18 SCC 130, number of dependents on deceased bachelor being his father and an unmarried sister, 1/3rd of his income was required to be deducted towards his personal and living expenses.

Held, that this final argument of learned counsel for the appellant is also liable to be rejected, since the number of dependents/claimants/respondents in this case is three, who are parents and minor brother (respondents No.1 to 3) of the deceased. Resultantly, deduction of only 1/3rd of the deceased income is to be affected towards his personal and living expenses. It was held by the Supreme Court in Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram and others, (2018) 18 SCC 130, that number of dependents on the deceased bachelor being his father and an unmarried sister, 1/3rd of his income was required to be deducted towards his personal and living expenses. Therefore, no fault *can be found with the deduction of 1/3rd from the deceased' s income towards personal expenses by the Tribunal.*

(Para 13)

F. Motor Vehicles Act, 1988—Ss. 166 and 173—Enhancement of award towards conventional heads—Held, in view of case of Supreme Court in National Insurance Company Limited v. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009, amounts should be enhanced at the rate of 10% every three years under conventional heads with 10% increase amount comes to Rs.16,500/-, Rs.44,000/- and Rs.16,500/- respectively.

Held, that further, the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others; 2017 (4) RCR (Civil) 1009 has held that reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years. Accordingly, the respondent/claimants would be entitled to 10% enhancement with respect to compensation under the conventional heads; with 10% increase the amount under the conventional heads comes to Rs.16,500/-, Rs.44,000/-and Rs.16,500/- respectively.

(Para 14)

G. Motor Vehicles Act, 1988—Ss.166 and 173—Enhancement of award towards future prospects—Held, deceased 19 years of age at time of accident and was self-employed/skilled labourer—Claimants

entitled to addition of 40% of established income on account of future prospects, and multiplier of 18 applicable while computing amount of compensation—Hence, total compensation enhanced to Rs.2,04,382/- with interest at rate of 9%.

Held, that besides, the respondents/claimants are also entitled to enhancement of compensation on account of future prospects as laid down by the Supreme Court in Pranay Sethi case (supra). It has been held by the Tribunal that the deceased was 19 years of age at the time of accident and was self-employed/skilled labourer. In terms of the law laid down, he is entitled to an addition of 40% of the established income on account of future prospects, and multiplier of 18 should be applied while computing the amount of compensation.

(Para 15)

Harsh Aggarwal, Advocate, *for the appellant.*

Pawan Kumar Hooda, Advocate, for respondents No.4 and 5 in FAO No.77 of 2017 and for respondents No.2 and 3 in FAO No.85 of 2017.

Rajesh Goyal, Advocate, for the cross-objectors/respondents No.1 to 3.

TRIBHUVAN DAHIYA J.

CM No.19698-CII of 2019 in/and
Cross Objection No.187 of 2019

Notice in the application as well as the cross-objection is issued to the non-applicant/appellant.

Mr. Harsh Aggarwal, Advocate appears and accepts noticeon behalf of the non-applicant/appellant.

For the reasons stated in the application, the delay of 702 days in re-filing the cross objection is condoned and cross-objections are taken on record.

Application stands disposed of.

FAO No.77 of 2017(O&M)
FAO No.85 of 2017(O&M)

(1) Two appeals bearing **FAO No.77 of 2017** and **FAO No.85 of 2017** filed by the Insurance Company, along with the cross-objections filed by respondents No.1 to 3 in FAO No.77 of 2017, are being decided together since they arise out of one accident.

(2) The appellant-Insurance Company has filed the appeals against the Award dated 08.08.2016 passed by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal).

(3) As per the facts recorded in the Award passed by the Tribunal, the accident in question took place on 22.05.2014 between a motorcycle that was being driven by the deceased Hitesh @ Monu and a tractor being driven by respondent No.4-driver, which was insured bythe appellant. As a result of the accident, Hitesh @ Monu died, and one of the claim petitions was filed before the Tribunal by his parents and minor brother (respondents No.1 to 3). The other claim petition was filed by Kamal, who was riding the motorcycle along with the deceased, and suffered injuries in the accident. The claim petitions were decided by the consolidated award passed by the Tribunal dated 08.08.2016 by partly allowing the claim petitions and awarding compensation to the claimants. Following issues were framed by the Tribunal:

> "1. Whether claimant Kamal received injuries (in MACT No.111/14) and deceased Hitesh died (in MACT No.112/14) in a roadside vehicular accident which had occurred on 22.05.2014 on account of rash and negligent driving of vehicle bearing No.HR-43-0798 by respondent No.1? OPP
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> 2. Whether the claimants are entitled to be compensated for the injuries suffered by claimant Kamal (in MACT no.111/14) and for death of deceased Hitesh (in MACT no.112/14) in the above accident, if so to what extentand by whom? OPP
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> 3. Whether the respondents No.1 and 2 have infringed the conditions of insurance policy, if so what its effect?OPP
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> 4. Relief."

(4) While deciding issue No.1 based on evidence led by the claimants, the Tribunal concluded that it was successfully proved on record that the accident, which took place on 22.05.2014, was only because of rash and negligent driving of respondent No.4-driver while driving the tractor, bearing registration No.HR-43-0798. Accordingly, the issue was answered in favour of the claimants/respondents.

(5) Issue Nos.2 and 3 being inter-connected were decided together by the Tribunal. It was held that injured Kamal, who appeared

in the witness box as PW-2 and deposed that he remained admitted in the hospital w.e.f. 22.05.2014 to 04.06.2014 on account of the accident, would be entitled to compensation. A rod had been inserted in his left leg, and he was still under treatment. He also proved on record his discharge summary (exhibit P-1), Out-patient cards, exhibits P-2 and P-3. On the basis of evidence led, he was awarded a consolidated amount of Rs.50,000/- on account of the injuries suffered by him in the accident, hospitalization and pain and suffering etc. So far as the second claim petition filed by the dependants of deceased Hitesh @ Monu is concerned, respondent No.1, who appeared as PW-1, claimed that his son, who was 19 years of age, died on account of the accident. He was labourer by profession. Although no other evidence was led on record to prove the vocation and earning of the deceased, the Tribunal assessed the compensation by taking deceased's income as a skilled labour notified under the Payment of Wages Act, which was Rs.6290/- per month at that time.

(6) Respondents No.1 to 3, who were held dependants of the deceased. After deducting 1/3rd of the income, annual dependency *qua* the respondents/claimants was assessed as Rs.4194 X 12 = 50,328/. By applying a multiplier of 18, compensation assessed was Rs.9,05,904/-. Besides, compensation of Rs.25,000/- was assessed for last rites, Rs.10,000/- for transportation and Rs.50,000/- for love and affection. Accordingly, the total compensation on account of death of Hitesh @ Monu was assessed as Rs.9,90,904/-.

(7) So far as the liabilities of the respondents are concerned, as driver of the tractor was holding a valid and effective driving licence on the date of the accident, and the offending vehicle was insured, theappellant along with owner and driver of the offending vehicle were held liable to pay the compensation jointly and severally along with interest at the rate of 9%.

(8) In both the appeals, the Insurance Company has come against the award passed by the Tribunal on the ground that it is a case of false involvement of the offending vehicle/tractor in the accident as the vehicle number was not mentioned in the FIR dated 22.05.2014. It points to collusion between the respondents-claimants and driver and owner of the vehicle.

(9) This argument of learned counsel for the appellant has no merit, since pursuant to lodging of the FIR (exhibit P-2) a report under Section 173 Cr.P.C. (exhibit P-5) was filed against the driver of the

offending vehicle who was facing criminal prosecution. Law in this regard is well settled, where the driver has been charge-sheeted under Section 173 Cr.P.C., it is safe to conclude that *prima facie* the accident occurred on account of his rash and negligent driving. Reference in this regard can be made to judgment of this Court in ***Girdhari Lal*** *versus* ***Radhey Sham and Others***[1]. Besides, mere non- mentioning the registration number of the offending vehicle in the FIR lodged at the time of the accident, is no ground to alleged that it is a case of false involvement of a vehicle for the purpose of filing claim petition. No other evidence has come on record which could, in anyway, even *prima facie* indicate that there has been any collusion between the claimants and the driver and owner of the vehicle in question. There can be many valid reasons for not mentioning registration number of the offending vehicle in question in the FIR that is lodged soon after the accident. The informer may not be able to recollect the exact registration number of the offending vehicle, since attention of the persons present at the time of accident is to save the injured, and rightly so. The police during investigation if comes to conclusion that a particular vehicle was involved in the accident and files a report under Section 173 Cr.P.C. on that basis, it dispels any notion of collusion.

(10) It has further been argued by learned counsel for the appellant that the deceased Hitesh @ Monu, who was driving the motorcycle in question, was 17 years of age at the time of the accident, as has been stated by PW-1 Jagbir/respondent No.1 in his cross examination before the Tribunal. Therefore, he could not have been issued a valid driving licence to drive the motorcycle. This act of driving without a licence itself establishes his own negligence. The argument also lacks merit. Merely because the deceased was not having any licence, is in itself not sufficient to conclude that he was negligent in causing the accident, or that it was a case of contributory negligence, as has been argued by learned counsel for the appellant. It has been clearly held by the Tribunal that no evidence was led to prove the fact that the deceased himself was negligent in driving and that the accident took place on that account. Besides, it is no longer *res integra* that in case a driver was driving the vehicle without a licence, that by itself would not lead to a finding of negligence as regards the accident. It has been held by Hon'ble Supreme Court in ***Sudhir Kumar Rana***

[1] 1993(2) PLR 109

versus ***Surinder Singh***[2] as under:

> "9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to be guilty of contributory negligence."

In the light of aforesaid proposition of law, coupled with the fact that there is no evidence on record which could even *prima facie* point out any negligence on the part of the deceased Kamal, it cannot be held that there is any contributory negligence on his part.

(11) It has next been argued by learned counsel for the appellant that the amount of compensation has been wrongly assessed by the Tribunal, in as much as, the deceased's income has been taken to be that of a skilled daily wager. Whereas, as per the respondents/claimants' own case, the deceased was a labourer by profession. Learned counsel for the appellant has referred to a notification by the Government of Haryana to indicate that the minimum wage of an unskilled labour at the time of accident. However, it is not disputed that no evidence was led to establish minimum wage of unskilled labour before the Tribunal. Therefore, in the absence of evidence on record, this Court is not inclined to interfere in the assessed income at this stage.

(12) Learned counsel for the Cross Objectors/respondents in FAO No. 77 of 2017 has argued that the compensation awarded to the claimants on account loss of their sole bread earner is on a lower side, as no compensation has been awarded towards loss of consortium and future prospects. Per contra, it has last been argued by learned counsel for the appellant that the deduction of 1/3rd towards personal expenses of the deceased for assessing the compensation is also wrong, since the deceased was a bachelor. As per law, the deduction should be of one half of his income.

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[2] (2008) 12 SCC 436

(13) This final argument of learned counsel for the appellant is also liable to be rejected, since the number of dependents/ claimants/respondents in this case is three, who are parents and minor brother (respondents No.1 to 3) of the deceased. Resultantly, deduction of only 1/3rd of the deceased income is to be affected towards his personal and living expenses. It was held by the Supreme Court in ***Magma General Insurance Co. Ltd.*** *versus* ***Nanu Ram @ Chuhru Ram and others***[3]**,** that number of dependents on the deceased bachelor being his father and an unmarried sister, 1/3rd of his income was required to be deducted towards his personal and living expenses. Therefore, no fault can be found with the deduction of 1/3rd from the deceased's income towards personal expenses by the Tribunal.

(14) Further, the Supreme Court in ***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***[4] has held that reasonable figures under the conventional heads,namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% every three years. Accordingly, the respondent/claimants would be entitled to 10% enhancement with respect to compensation under the conventional heads; with 10% increase the amount under the conventional heads comes to Rs.16,500/-, Rs.44,000/- and Rs.16,500/- respectively.

(15) Besides, the respondents/claimants are also entitled to enhancement of compensation on account of future prospects as laid down by the Supreme Court in ***Pranay Sethi*** case *(supra)*. It has been held by the Tribunal that the deceased was 19 years of age at the time of accident and was self-employed/skilled labourer. In terms of the law laid down, he is entitled to an addition of 40% of the established income on account of future prospects, and multiplier of 18 should be applied while computing the amount of compensation.

(16) On the aforesaid analysis, respondents No.1 to 3/claimants in FAO No.77 of 2017 are held entitled to the following revised amount of compensation:

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[3] (2018) 18 SCC 130

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

Sr. No.	Head	Amount (Rs.)
1.	Monthly Income	5,547
2.	Annual Income	5,547 x 12 = 66,564
3.	Future Prospects @ 40%	26,626
4.	Total income including future prospects	93,190
5.	Deduction towards personal expenses @ 1/3rd	31,063 (93,190-31,063 – 62,127)
6.	Multiplier '18'	(62,127 x 18) 11,18,286
7.	Loss of consortium with 10% increase after 3 years	44,000
8.	Loss of Funeral Expenses with 10% increase after 3 years	16,500
9.	Loss of Estate with 10% increase after 3 years	16,500
10.	Total compensation	11,95,286

(17) The award passed by the Tribunal dated 08.08.2016, therefore, stands modified and respondents no.1 to 3/claimants in FAO No.77 of 2017 are held entitled to an enhanced amount of **Rs.2,04,382/-** with interest at the rate of 9% from the date of filing the claim petition till its actual realization, which shall be jointly and severally paid in the same ratio as directed by the Tribunal.

(18) Resultantly, appeals filed by the appellant/Insurance company are hereby dismissed, and the cross objections are allowed in the terms aforesaid.

Ritambra Rishi