IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1248 of 1995 (O&M)
Date of decision: 04.08.2015

Om Patti Devi and others ....Appellants

Versus

Raj Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Pawan Attri, Advocate
for Mr. Naveen Sheoran, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.2.

Mr. K.D.S. Hooda, Advocate
for respondents No.4 and 5.

Mr. Suman Jain, Advocate
for respondent No.6.

K.C. PURI J. (Oral)

This is an appeal directed by widow and five minor children for enhancement of compensation against the award dated 11.01.1995, passed by Sh. T.C. Gupta, Motor Accident Claims Tribunal, Rohtak, on account of death of Krishan Lal, aged 44 years, in a motor vehicular accident on 16.06.1992.

The learned Tribunal after adjudication partly accepted the claim petition and allowed a sum of Rs.1,56,000/- against the claimed amount of Rs.8,00,000/-.

The facts are not in dispute. The deceased was a PTI Teacher in a Government High School, Assan and his salary was Rs.2,435/- per month. The dependency has been taken as Rs.1,625/- per month and the yearly dependency has been taken as Rs.19,500/- (1,625 x 12). The multiplier of 8 was applied and in this manner, the amount of compensation was calculated as Rs.1,56,000/-. The amount granted is on lower side. The income of the deceased has been rightly taken as Rs.2,435/-. The age of the deceased was 44 years and as such, 30% amount has to be added in respect of future prospects. So, after adding 30%, the amount of income of the deceased comes to Rs.3,165.5/-. The claimants are six in number and as such, in view of authority **"Smt. Sarla Verma and others vs. Delhi Transport Corporation and another"** reported in **2009(3) R.C.R. (Civil) 77**, 1/4th amount has to be deducted in respect of personal expenses. So, the monthly dependency of the claimants comes to Rs.2,374.12/- and the yearly dependency comes to Rs.28,489.5/-. The multiplier applicable at the age of 44 years is 14, so, by applying that multiplier the amount of compensation comes to Rs.3,98,853/-. Keeping in view the price index for the year 1992, another sum of Rs.10,000/- stands allowed in respect of expenses on last rites and transportation. Another sum of Rs.30,000/- stands allowed in respect of consortium and another sum of Rs.30,000/- stands allowed in respect of loss of love and affection. So, in this manner, the claimants are held entitled to claim Rs.4,68,853/-, say Rs.4,68,900/-.

At this stage, learned counsel for insurance company has submitted that income-tax should be deducted from the income of the deceased.

But that contention cannot be accepted as it is not proved on the filed that income of deceased fall within the ambit of taxable limit. Otherwise also, a government employee can avail so many deductions prevalent at that time. So, that contention is meritless.

Regarding the liability, learned counsel for the appellant has submitted that the Tribunal has returned a finding that the accident has taken place due to rash and negligent driving of auto-rickshaw bearing registration No.HR-10-4521, owned by Sukhbir Singh, owner and driver, which was duly insured with Oriental Insurance Company Limited. He has further contended that four-wheeler bearing registration No.HR-16-1673 was owned and driven by Raj Kumar i.e. respondent No.1. It is also submitted that it is a case of composite negligence and not a case of contributory negligence. It is further argued that in case of composite negligence the victim can claim the compensation from any of the tort feasors and to fortify his argument has relied upon authority ***"Oriental Insurance Company Limited vs Monika Verma and others"*** reported in **2008 (3) R.C.R. (Civil) 693** and ***"Gurmej Singh vs Vijay Kumar and others"*** reported in **2012 ACJ 1351**.

Learned counsel for respondent No.9 has submitted that the Tribunal has rightly held that it is a case of contributory negligence and as such, the liability has been rightly fastened upon respondents No.1, 7 and 9. Counsel for respondent No.9 has further submitted that Raj Kumar i.e. respondent No.1 has not insured the vehicle at the relevant time and he should be burdened.

I have considered the learned counsel for both the parties and have gone through the record of the case.

No doubt, the learned Tribunal has given a finding that it is a case of contributory negligence of driver of four-wheeler bearing registration No.HR-16-1673 and auto-rickshaw bearing registration No.HR-10-4521, but the appellant has not contributed anything in the accident as he was simply a passenger in an auto-rickshaw. It is a case of composite negligence qua claimant and in case of composite negligence, the victim can claim compensation from any of the tort feasors in view of authorities Oriental Insurance Company Limited vs Monika Verma and others (supra) and Gurmej Singh vs Vijay Kumar and others (supra).

So, in these circumstances, it is held that claimant shall be entitled to claim the compensation from any of them i.e. from respondents No.1, 7 and 9.

In case, respondent No.1, 7 and 9 have paid the amount of compensation, then in that case they can recover ½ of the amount from respondents No.1 and 2 i.e. owner and driver, other offending vehicle.

So, in view of the above discussion, the appeal is partly allowed and respondents No.1, 7 and 9 are jointly held liable to pay the enhanced amount of compensation. The claimants can recover the amount of enhanced compensation from any of them i.e. from respondents No.1, 7 and 9. Out of the enhanced amount Rs.1,50,000/- shall be paid to the widow and the remaining amount shall be shared by remaining claimants in equal share. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till payment.

Appeal stands disposed of, accordingly.

A copy of this order be sent to the Tribunal for compliance.

(K.C. PURI)
04.08.2015 **JUDGE**
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