IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 16 OF 2001 (O&M)
DECIDED ON : 01.07.2015

New India Assurance Company Limited
...Appellant

versus

Angrejo Devi and another

...Respondents

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

Present : Mr. Neeraj Khanna, Advocate,
for the appellant.

K. C. PURI, J.

The appeal was directed in the year 2000 and file of the Tribunal as well as of this court seems to have been burnt in the fire incidence of this court in the year 2011. The file of this court was reconstructed. Notice was sent to the respondents which has been received back unserved.

This is an appeal directed by the Insurance Company against the Award dated 29.08.2000 passed by Shri Rajinder Parshad, Motor Accident Claims Tribunal, Ambala, vide which the claim petition preferred by the claimants was partly accepted and a sum of ₹4,28,000/- was allowed as compensation.

Briefly stated, the unfortunate parents of deceased Raj

Kumar filed claim petition under Section 166 read with Section 163-A of the Motor Vehicles Act, 1988, claiming compensation on account of death of their son Raj Kumar in a motor vehicular accident.

The facts as gathered from the record are that on 07.10.1998 at about 3.30 PM, deceased Raj Kumar after loading Saria (iron rods) in his mule cart was going from Lalru towards Lalru Mandi i.e from Chandigarh side to Ambala side. When he reached near Cheema Factory, Ambala-Chandigarh Road, a truck bearing registration No. HYA-2277 being driven in a rash and nelgigent manner came from the opposite side i.e from Ambala side and struck against the mule cart by going on extreme wrong side of the road. Due to the accident, the deceased sustained multiple grevious injuries and he died at the spot. His mule also died at the spot. The cart was also damaged. The accident was witnessed by one Satpal, another mule cart owner. FIR No. 77 dated 07.10.1998 was also registered in this regard.

It was alleged by the claimants in the claim petition that their son was aged about 22 years and he was earning ₹7000/- per month by plying mule cart. The claimants were dependent upon him and after his death they have lost their livelihood.

Upon put to notice, respondent No.1 did not appear before the Tribunal and as such, he was proceeded ex parte.

Respondent No.2 appeared and filed written statement taking preliminary objections that the claim petition was not maintainable. On merits, the age and income of deceased and dependency of the claimants was denied. The accident was also denied. It was further pleaded that the amount of compensation is exaggerated.

Respondent No.3-Insurance Company filed separate written statement taking preliminary objections regarding maintainability. It was further pleaded the claim petition was not signed or presented in accordance with law. It was further pleaded that claim petition was filed on false and frivolous grounds in collusion with respondents No.1 and 2.

Replication was not filed. From the pleadings of parties, following issues were framed :-

1) Whether the deceased Raj Kumar son of Banarsi Dass died in a road side accident allegedly caused due to rash and negligent driving of truck No. HYA-2277 by respondent No.1. ? OPP

2) If Issue No.1 is proved, then to what amount of compensation the claimants are entitled to and from whom ? OPP

3) Whether respondent No.1 was not having valid driving license on the date of accident ? OPR
4) Relief.

Learned Tribunal, after adjudication, allowed the claim petition and awarded a sum of ₹4,28,000/- as compensation to the claimants.

Feeling dissatisfied with the above said Award dated 29.08.2000 passed by Motor Accident Claims Tribunal, Ambala, the Insurance Company has preferred the instant appeal.

The Tribunal has taken the income of deceased as ₹3500/- per month. The dependency has been taken as ₹2000/- per month. The multiplier of 17 has been applied. In this manner, the amount of compensation comes to ₹4,08,000/- (2000x12x17). Another sum of ₹10,000/- was allowed as the price of mule and damage caused to the cart. ₹10,000/- was also allowed as expenses incurred on the transportation of dead body and performance of last rites. In this manner, a total sum of ₹4,28,000/- was allowed as compensation to the claimants.

Learned counsel for the appellant has challenged the Award on the ground of quantum only. It is submitted that the deceased was unmarried and as such, the multiplier of 17 has been wrongly applied by the Tribunal.

Learned counsel for the appellant has further submitted that there is collusion between the claimants and remaining respondents. It is further submitted that the Tribunal has wrongly rejected the application under Section 170 of the Motor Vehicles Act (in short "the Act").

I have carefully considered the said submissions but do not find any force in the same.

There is nothing on record to show that there is collusion between the claimants and respondents. The FIR was registered against the driver of the offending vehicle and as such, this argument cannot be accepted.

So far as the argument that age of parents is required to be considered for the purpose of multiplier is concerned, that submission is meritless, in view of recent authority of Hon'ble Apex Court in ***Civil Appeal No. 4497 of 2015 decided on 15.05.2015*** titled as ***"Munna Lal Jain and another vs Vipan Kumar Sharma and others".*** So multiplier of 17 has been correctly applied.

The income of deceased has been taken as ₹3500/- per month and after deducting ₹1500/-in respect of personal expenses, the monthly dependency has been taken as Rs.2000/-. The dependency has to be calculated by deducting 50% in respect of personal expenses. So, by deducting 50%, the dependency comes to ₹1750/- per month. The yearly dependency comes to ₹21,000/- (1750 x 12). So by applying the multiplier of 17, the amount of compensation comes to ₹3,57,000/-. The Tribunal has allowed a sum of ₹10,000/- in respect of death of mule and damage caused to the cart. The Tribunal has further allowed a sum of ₹10,000/- on account of transportation of dead body and expenses on last rites.

The Tribunal has not taken into account the future prospects. If the amount in respect of future prospects is considered, in that case, the amount granted cannot be said to be on higher side.

No other point has been urged before me.

In view of the above discussion, the appeal is without any merit and the same stands dismissed.

JULY 01, 2015 **(K. C. PURI)**
shalini **JUDGE**