In the High Court for the States of Punjab and Haryana, at Chandigarh

…

FAO-3074-2010

Date of decision: 09.02.2015

Minakshi and others ..Appellants

Versus

Suresh Kumar and others ..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. Sanjay Mittal, Advocate
for the appellants.
Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

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Mahavir S.Chauhan, J.(Oral)

Hariom, a youth more than 25 years of age, earning Rs. 5000/- per month as salary from his private employment, died in a motor vehicle accident caused on account of rash and negligent driving of a jeep bearing registration No. HR-56-3077 by respondent Suresh Kumar at about 7/7.30 a.m. on 4.10.2006. The jeep belonged to respondent Prem Saini and was insured with respondent Oriental Insurance Company Ltd.

Legal heirs of deceased Hariom preferred claim application No.123 of 2007 to seek compensation alleging loss of dependency.

The application was contested by respondent Nos.1 and 3 by filing their written statements separately from each other wherein all the allegations of the application were denied and a few preliminary objections were pleaded.

From the pleadings of the parties, learned Tribunal framed following issues:-

1. Whether the accident in question resulting into the death of Hariom Kabiya took place on account of rash and negligent driving of offending vehicle jeep bearing registration No. HR-56-3077 by its driver/respondent No.1? OPP

2. Whether the above named petitioners are entitled to claim any compensation and if so to what amount and from whom? OPP

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident in question? OPR-3

4. Whether the insurance company/respondent No.3 is not liable to pay compensation on the grounds as alleged in the written statement? OPR-3

5. Relief.

Both the sides adduced evidence and were heard by the learned Tribunal.

Issue No.1 pertaining to factum and manner of the occurrence was decided in favour of the applicants-appellants, while issue No.3 pertaining to validity of driving licence held by respondent Suresh Kumar was decided against the insurer (respondent No.3) as no evidence was led on this issue. The plea of the insurer to avoid liability to pay compensation was also negatived by the learned Tribunal.

While deciding issue No.2 pertaining to entitlement of the applicants-appellants to claim compensation, learned Tribunal assessed age of the deceased at 25 years and his income as Rs. 5000/- per month. By deducting 1/3rd from the assessed income of the deceased, learned Tribunal applied a multiplier of 17 and awarded Rs. 10000/- on account of funeral expenses, loss of estate and loss of consortium.

While age and income of the deceased as also selection of multiplier are not in dispute. Learned counsel for the applicants-appellants impugns the correctness of the findings of the learned Tribunal with regard to award of compensation to the applicants-appellants by submitting that instead of 1/3rd, 1/4th of the assessed income of the deceased was to be deducted, dependents left behind by him being four in number but prior to that an amount equivalent to 1/3rd of the assessed income of the deceased was to be added towards future prospects. He has also submitted that compensation on account of funeral expenses, loss of estate and loss of consortium is on the lower side and it has to be appropriately enhanced. Leaned counsel for the applicants-appellants, however, does not dispute the correctness of the findings with regard to award of Rs.17,60,716/- on account of expenses on treatment and medicines etc.

The submissions, however, are contested by learned counsel appearing for the insurer and on its behalf it is vehemently argued that the compensation awarded by the learned Tribunal is just and reasonable and the applicants-appellants are not entitled to anything more than what has been awarded by the learned Tribunal.

As per settled law, to the assessed income of the deceased, i.e., Rs. 5000/- p.m., 50% of it has to be added towards future prospects. This brings income of the deceased to Rs.7500/- per month. Number of dependents of the deceased being four, 1/4th from the assessed income of the deceased has to be deducted as expenditure of the deceased upon himself. This brings loss of dependency to Rs. 5625/- per month or say Rs. 67500/- per annum. By applying multiplier of 17, compensation payable to applicants-appellants on account of loss of dependency comes to Rs. 11,47,500/-. The applicants-appellants are also entitled to Rs. 1760716/- on account of expenditure on treatment of the deceased besides an amount of Rs. one lac towards loss of consortium, Rs. 25000/- towards expenditure on last rites of the deceased, Rs. 5000/- towards loss of estate and Rs. one lac towards loss of love and affection. This brings the compensation payable to the applicants-appellants to Rs. 31,38,216/-.

The compensation hereby awarded shall be inclusive of the compensation awarded by the learned Tribunal.

Applicants-appellants are also held entitled to costs of this appeal which are assessed as Rs. 2200/-.

However, other terms of the impugned award shall remain unchanged.

Appeal is disposed of accordingly.

February 9,2015 (MAHAVIR S.CHAUHAN)
nk JUDGE