IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.556 of 2011 (O&M)
Date of Decision: July 03, 2015

Sudesh (deceased) through LRs .... Appellant

vs.

Raj Singh and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Anil Ghanghas, Advocate for the appellant.

Mr. Nitin Mittal, Advocate for
Mr. Subhash Goyal, Advocate for respondent No.3.

***

Kuldip Singh J.

Claimant Sudesh, who died during the pendency of the appeal has sued this appeal through his LRs, challenging the Award dated 09.08.2010 passed by Motor Accident Claims Tribunal, Bhiwani (in short 'the Tribunal'), wherein compensation of ₹5,00,000/- (rupees five lac only) in lump sum was awarded on account of injury received by him in a motor vehicular accident, which took place on 03.04.2007.

Short facts of the case are that on 03.04.2007 at about 12.00/1.00 p.m., Sudesh alongwith one Bablu were sitting on a motor cycle bearing registration No.HR-35B-3326 and one Yogesh, eye witness was standing near Talu Turning Point. They were talking to each other. The motorcycle of the claimant was hit by a Scorpio vehicle bearing registration No.HR-55D-8288, which came from the side of Mundhal, being driven by respondent No.1 Raj Singh in a rash and negligent manner. In this regard FIR No.127, dated 03.04.2007 under Section 279 and 337 IPC was registered at Police Station Sadar Bhiwani. As a result of the accident, Sudesh along with Balbu received injuries. Claimant-Sudesh was referred to PGIMS Rohtak. However, he was got admitted in Sarvvodya Hospital, Rohtak where he remained admitted from 03.04.2007 to 02.05.2007. Thereafter, he was referred to Sir Ganga Ram Hospital, Delhi, where he remained admitted from 02.05.2007 to 11.05.2007.

Respondent Nos.1 and 2 i.e. owner and driver of the offending vehicle in their joint written statement took the plea that it was a hit and run case and no accident with their Scorpio had taken place. The Insurance Company took usual objections.

Following issues were framed for the disposal of the claim petition:

> "*1. Whether the accident which occurred on 3.4.2007 at about 12.00/1.00 p.m. caused injuries to petitioner due to rash and negligent driving of respondent No.1 while driving Scorpio No.HR-55D-8288, as alleged?OPP*
>
> *2. If issue No.1 is proved, whether the petitioner is entitled for compensation, if so to what amount and from whom? OPP*
>
> *3. Whether the petition is not maintainable in its present form? OPR*
>
> *4. Whether the petitioner has no locus standi to file the present petition? OPR*
>
> *5. Whether the driver of the offending vehicle was not holding the valid driving license on the date of accident?*

OPR

6. Whether the respondent No.3 is liable to indemnify the compensation to the claimant? OPR

7. Relief."

After recording the evidence of both the parties and noticing the treatment and the medical bills and also taking into consideration the disability certificate (Ex.PW8/A) showing 26% permanent disability, the Tribunal awarded a lump sum compensation of ₹5,00,000/- (rupees five lac only) under all the heads. The Tribunal also came to the conclusion that at the time of accident, respondent No.1 was not having valid driving licence. Therefore, the Insurance Company was completely absolved from the liability.

Aggrieved by the said order, the claimant filed the present appeal. However, according to learned counsel for the appellant, the appellant having suffered the head injury, was under depression and had committed suicide during the pendency of the present appeal and, therefore, his LRs were brought on record.

Respondent No.1 did not appear despite publication and was proceeded against ex parte. Respondent No.2 appeared on one date. Thereafter, he slipped away from the proceedings.

I have heard learned counsel for the appellant as well as learned counsel for the Insurance Company and have also carefully gone through the case file.

The medical bills produced before the Tribunal shows that total medical bills (Ex.P-2 to Ex.105) are amounting to ₹5,17,137/-. However, the Tribunal in a casual manner awarded lump sum compensation of ₹5,00,000/-, which is even less than the amount of medical bills.

It is also not denying fact that the claimant remained admitted firstly in Sarvvodya Hospital, Hisar, then Sir Ganga Ram Hospital, Delhi. The total period that he remained admitted in the hospital is from 03.04.2007 to 11.05.2007 i.e. 40 days. The disability certificate Ex.PW8/A shows that due to head injury, the claimant has suffered 26% permanent disability. The claimant was an agriculturist and there is no proof of his income. Therefore, his income in year 2007 is to be taken @ ₹3,000/- per month for managing his agriculture land.

Now coming to the compensation part, the entire medical bills amounting to ₹5,17,137/- are allowed. For pain & suffering and special diet for 40 days during admission in the hospital, compensation @ ₹2,000/- per day is allowed, which comes to ₹80,000/-. Since the income of the deceased is taken to be ₹3,000/- per month, the loss of income on account of 26% permanent disability comes to ₹780/- per month by applying the multiplier method. The deceased was 26 years of age at the time of accident. Therefore, the multiplier of 18 is applied and the total loss of income comes to ₹1,68,480/-. For enjoyment of life, a sum of ₹1,00,000/- is allowed. For transportation ₹5,000/- are allowed. For attendant for 40 days, a sum of ₹3,000/- is allowed. Thus, total amount of compensation comes to ₹8,73,617/- (rupees eight lac seventy three thousand six hundred seventeen only).

Learned counsel for the Insurance Company has argued that since the claimant has died, therefore, only compensation for the treatment should be allowed and that compensation under other heads is not to be allowed.

I am not impressed by the said argument. In this case, the claimant had suffered head injury, which resulted into permanent disability to the extent of 26%, which is considerable when the functional disability is taken into consideration. This functional disability on account of head injury continues for whole of the life. As per the contention of learned counsel for the appellant, the claimant went into depression and ultimately committed suicide during the pendency of the present appeal.

In these circumstances, the compensation as calculated above for loss of income, loss of enjoyment of life ect. is also to be allowed.

Coming to the question of liability, the Tribunal has recorded that respondent No.1 was not having valid driving licence though it was renewed later on 14.06.2007.

It being so, the Tribunal also erred in completely absolving the Insurance Company from the liability. In case, the driving licence is found to be invalid or fake or no licence, the Insurance Company first reimburses the claimant and then recovers the compensation from the insured.

As a result of the foregoing discussion, the present appeal is allowed and the compensation is enhanced to

Rs.8,73,617/- along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization. The compensation shall be first paid by the Insurance Company, which shall have recovery rights from the insured.

(KULDIP SINGH)
JUDGE

July 03, 2015
sarita