

In the High Court of Punjab and Haryana at Chandigarh

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CM No.30736-CII of 2012
and
F.A.O. No.6399 of 2012 (O&M)

.....

Date of decision:24.4.2015

Royal Sundaram Alliance Insurance Company Ltd.

.....Appellant

v.

Asha Goyal and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. D.K. Prajapati, Advocate the appellant.

Mr. Naveen S. Panwar, Advocate for respondents No.1 and 2.

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Inderjit Singh, J.

CM No.30736-CII of 2012:

For the reasons mentioned in the civil miscellaneous application, the delay of 210 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

F.A.O. No.6399 of 2012 (O&M):

This appeal has been filed by Royal Sundaram Alliance Insurance Company Ltd. (hereinafter referred to as 'the Insurance Company') against Asha Goyal, Ashwani Goyal, Yadvender alias Mool Chand-Driver of truck No.HR-69-6267, Kamlesh, Ashu, Vinay and

Manisha-respondents challenging the impugned award dated 25.1.2012 passed by the Motor Accident Claims Tribunal, (Fast Track Court), Sonapat (hereinafter referred to as 'the Tribunal'), vide which an award of ₹12,58,000/- along with interest @7.5% per annum from the date of filing of the claim petition has been passed.

The brief facts of the case are that claimants-Asha Goyal and Ashwani Goyal have filed the claim petition against Yadvender alias Mool Chand-Driver, Naresh Kumar (since deceased) through his LRs (i) Kamlesh (ii) Ashu, (iii) Vinay (sons) and (iv) Manisha daughter of late Shri Naresh Kumar-owner and Royal Sundaram Alliance Insurance Company Ltd.- Insurer/respondents-, under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') for grant of compensation amount of ₹30 Lacs on account of death of Madan Gopal Goyal husband of Asha Goyal and father of Ashwani Goyal in a motor vehicle accident, which had occurred on 1.4.2010 at 4.15 p.m. in the vicinity of Maharana Partap Chowk, Sector 12, Near Osram Factory, Sonapat by the use of truck bearing registration No.HR-69-6267 (hereinafter referred to as 'the offending vehicle'). On 1.4.2010, Madan Gopal Goyal along with his brother Mool Chand were coming on motorcycle bearing registration No.HR-10-G-1784 Kinetic Boss. At about 4.15 p.m., when they reached at Maharana Partap Chowk, Sector 12, Near Osram Chowk, Sonapat, the offending vehicle driven by respondent No.1 at a very high speed and in a rash and negligent manner without blowing any horn straightway hit the motorcycle. Madan Gopal Goyal (since deceased) and his brother Mool Chand fell down on the

road. Madan Gopal Goyal received multiple, serious and grievous injuries on various parts of his body. He was immediately shifted to General Hospital, Sonapat. Madan Gopal Goyal succumbed to injuries. Post-mortem examination was conducted. FIR was also got registered on 1.4.2010 at Police Station Civil Lines, Sonapat.

On the other hand, the case of respondents No.1 and 2 in the written statement is that the accident was not caused due to rash and negligent driving of respondent No.1, rather, Madan Gopal Goyal (since deceased) himself struck the vehicle from back side when the vehicle was taking turn by giving indication. It is also stated that Mool Chand brother of the deceased was not pillion rider, rather his son, who is a mentally disturbed person, was the pillion rider. The Insurance Company also took the plea that no such accident took place.

Both the parties led evidence and the learned Tribunal vide award dated 25.1.2012 awarded a sum of ₹12,58,000/- as compensation with interest @ 7.5% per annum.

At the time of arguments, learned counsel for the appellant-Insurance Company argued that the multiplier has been wrongly applied.

Notice of motion was issued in this case. Mr. Naveen S. Panwar, learned Advocate appeared on behalf of respondents-claimants No.1 and 2 and contested this appeal. As no one appeared on behalf of respondents No.4 to 7, hence the appeal qua them has been dismissed vide order 28.11.2014 passed by this Court. This appeal has been contested only by respondents-claimants No.1 and 2.

Learned counsel for the appellant-Insurance Company has argued that the income has been taken as excess by the Tribunal. A perusal of the evidence on record shows that income-tax returns have been filed in this case. As per the income-tax returns, the income of the deceased has been assessed at ₹1,08,820/- per annum for the year 2007-08. It has been assessed at ₹1,34,300/- for the year 2009-10 and his income for the year 2010-11 has been assessed at ₹1,58,600/-. The Court has taken an income of the deceased only as ₹10,000/- per month, which, in no way, can be held as excessive. It is in the evidence that the deceased has left behind his legally wedded wife and a son aged 25 years. Claimant No.2-son of the deceased is 100% handicapped as is evident from the disability certificate Ex.P.7.

Keeping in view the special facts and circumstances of the present case, the Tribunal has concluded that the deceased might be spending $\frac{1}{5}$ th of his earnings for his personal maintenance. It is correct that generally where there are only two-three dependents, then deduction of $\frac{1}{3}$ rd is to be made. But this is a special case, where the son of the deceased is 100% handicapped. Therefore, in these circumstances, the deceased will not spend $\frac{1}{3}$ rd amount on himself. The findings of the Tribunal, therefore, regarding deducting $\frac{1}{5}$ th amount, which the deceased was spending for himself are correct. Rather, a perusal of the record shows that the Tribunal has only awarded ₹5,000/- for the loss for consortium and ₹5,000/- towards loss to estate etc. There is nothing on the record that any income-tax is being paid by the deceased. The age of 47 years has been taken as per the

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evidence by the Tribunal. In no way, it can be held that the excessive amount has been awarded by the Tribunal.

Keeping in view the facts and circumstances of the present case, I do not find any merit in this appeal and the same is dismissed.

April 24, 2015.

(Inderjit Singh)
Judge

hsp