IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.4803 of 2014
Date of Decision: 01.04.2015

National Insurance Company Ltd.

..... APPELLANT

VERSUS

Shallu Behal and others

..... RESPONDENT

FAO No.5485 of 2014

Shallu Behal and others

..... APPELLANTS

VERSUS

Karanvir Singh and others

..... RESPONDENTS

PRESENT: - Mr. Ravinder Arora, Advocate
for the appellant
(in FAO No.4803 of 2014) and
for respondent No.3
(in FAO No.5485 of 2014)

Mr.Mansur Ali, Advocate
for respondents No.1 and 2
(in FAO No.4803 of 2014) and
for the appellants
(in FAO No.5485 of 2014)

Mr. Sunny Singla, Advocate
for respondents No.5 and 6
(in FAO No.4803 of 2014) and
for respondents No.1 and 2
(in FAO No.5485 of 2014)

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1) Whether Reporters of the local papers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

SHEKHER DHAWAN, J.

This order will dispose off above detailed two appeals i.e. the first appeal filed by the appellant-Insurance Company and second appeal filed by the claimants seeking enhancement of the compensation. Both having arisen out of the same award dated 05.02.2014 passed by Motor Accident Claims Tribunal, SAS Nagar (Mohali).

The claimants are widow of Naveen Kumar, minor daughter aged about eight months and parents of Naveen Kumar.

The accident had taken place on 21.04.2012 as the claimants along with Naveen Kumar (since deceased) were going from Mohali to Patiala in Alto Car bearing registration No.PB-65-J-7154. Naveen Kumar was driving the said Car. Maruti Swift Car bearing registration No.PB-11-AS-6373, which was being driven by respondent No.1 came from opposite side and hit against front side of Alto Car. Resultantly, Naveen Kumar, Shallu Behal and Anvi sustained injuries. Later on, Naveen Kumar succumbed to the injuries. The matter was reported to the police. The claimants claimed compensation. As per the claimants, Naveeen Kumar was working as Executive Finance with Kone Elevator Private Limited and his annual income was ₹4,44,705/- and all the claimants were dependent upon the income of the deceased.

The respondents contested the claim petition.

The Tribunal settled the following issues and the parties were put to trial:

1. Whether respondent No.1 drove Maruti Swift Car bearing No.PB-11-AS-6373 in a rash and negligent manner hit against Alto Car bearing registration No.PB-65-J-7154 driven by Naveen Kumar Behal and caused his death? OPP
2. Whether the claimants are entitled to compensation. If so to what extent? OPP
3. Whether the claim petition is not maintainable? OPR

4.Relief.

After recording the evidence of the parties, the Tribunal awarded compensation of ₹10,57,128/- and the liability to pay the amount of compensation was put on all the three respondents i.e. driver, owner of Maruti Swift Car bearing registration No.PB-11-AS-6373 and M/s National Insurance Company Ltd. with whom the said Car was insured on the date of accident.

Mr. Mansur Ali, learned counsel for the appellants-claimants took the plea that the Tribunal has not awarded 'just compensation. It had come in the statement of PW-2 Gurdeep Singh Saini, who was working as Manager Service of Koni Elevator India Pvt. Ltd., Mohali and proved Ex.P-5 having been issued from their office and under the signatures of Rajiv Gusain, Regional Manager of the Company. As per PW-2, Naveen Kumar (since deceased) was working in the Company as Executive Finance and was drawing annual salary to the tune of ₹4,44,705/-. The Tribunal simply discarded the statement of this witness on he ground that said witness had not brought the Registration Certificate of the Company and failed to prove the record of his employment with the Company whereas the said witness was examined to prove the income of the deceased and the witness has been able to prove the income of deceased to be ₹4,44,705/- per annum but the Tribunal fell in error while taking his income to be ₹5,000/- per month only.

Learned counsel for respondent No.3 took the plea that income of Naveen Kumar has rightly been taken by the Tribunal as he was working in a private company and his income was not proved. The age of the deceased was 32 years.

Mr. Ravinder Arora, learned counsel for the appellant-National Insurance Company Ltd. (in FAO No.4803 of 2014) took the plea that the claimants have not been able to prove that the accident had taken place because of rash and negligent driving of respondent No.1 and if the same is not proved on the file, the driver as well as the owner are not liable to pay any compensation and there is no liability of the appellant-Insurance Company because their liability comes only after the liability of driver and owner. It had come in evidence that the offending vehicle was being driven by Rupinder Singh, who was not holding valid driving license. The Insurance Company is not liable to pay any compensation.

I have considered the rival submissions having been made by learned counsel for both the parties.

This aspect has been already dealt with by the

Tribunal in its right perspective that FIR was registered against Karanvir Singh. Karanvir Singh RW-1 has testified that he was sitting on the front seat of the Car but he was not driving the Car. As the FIR was registered against Karanvir Singh and he has not challenged the same that FIR was incorrectly recorded against him. There is no reason to record the findings otherwise that accident was not caused by Karanvir Singh while driving Maruti Swift bearing registration No.PB-11-AS-6373 and, as such, the findings recorded by the learned Tribunal on this point does not call for any interference. Otherwise the age of the deceased has been rightly taken.

As regard to the income of the deceased Naveen Kumar, the most relevant evidence was by way of statement of PW-2 Gurdeep Singh Saini, who was a summoned witness and was working as Manager Service of Kone Elevator India Pvt. Ltd., Mohali with whom Naveen Kumar was working as Executive Finance. The witness made the statement on the basis of record and proved the salary certificate Ex.P-5. As per said certificate, his annual salary was to the tune of ₹4,44,705/- but the Tribunal certainly fell in error while taking his annual income to be just ₹60,000/-. Mere fact that PW-2 was not working in H.R. Department or he had not brought the Registration Record relating to the

Registration of the Company does not make out a case that the witness was not making the correct deposition although he was a summoned witness and was making statement on the basis of the record. There was absolutely no reason or material with the Tribunal to discard such an important evidence. More so, Naveen Kumar was an income tax assessee and his income tax was being deducted as detailed in his salary slip Mark-A to Mark-C produced by PW-2. The witness has specifically denied the suggestion that salary slip Ex.P-5 is forged and fabricated. The Tribunal has just taken casual approach while discarding the testimony of PW-2 and coming to the conclusions which are merely based on assumptions that income of the deceased was ₹5,000/- per month whereas the same is otherwise proved to be ₹4,44,705/- per annum. Accordingly, the findings of the Tribunal on the point of calculating the amount of compensation to be awarded in this case are modified and income of the deceased Naveen Kumar is taken to be ₹4,44,705/- say ₹4,44,700/- per annum. Out of this, 1/3rd is to be deducted on account of dependency. However, the Tribunal has correctly applied multiplier to be 16 and the amount of compensation to be awarded in this case is determined as under:

1	Annual income of the deceased	₹4,44,700/-
2	1/3rd deducted on account of dependency	₹1,48,233/- (₹2,96,467/-)
3	Applying of multiplier of 16	₹2,96,467/- x16=₹47,43,473/-
4	Future prospects(30% increase)	₹14,23,041/- Total ₹61,66,513/-
5	Consortium	₹1,00,000/-
6	Funeral Expenses	₹25,000/-
7	Total	₹62,91,510/-

The enhance amount of compensation in this case is ₹52,34,382/- (₹62,91,510/- - ₹10,57,128/-). The enhanced amount of compensation shall be paid by the Insurance Company within one month from today, failing which the appellants shall be entitled to receive interest @ 7½% per annum.

Resultantly, the present appeal filed by the appellant-Insurance Company (in FAO No.4803 of 2014) stands dismissed whereas appeal filed by the appellants-claimants (in FAO No.5285 of 2014) is accepted partly.

With these modifications, both the appeals stand disposed off.

(SHEKHER DHAWAN)
JUDGE

April 01, 2015
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