212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO-1547 of 2015(O&M)
Date of decision : 08.11.2016

Shri Ram General Insurance Company Limited .... Appellant

versus

Smt.Poonam and others .... Respondents

2. FAO-561 of 2015(O&M)
Date of decision : 08.11.2016

Smt.Poonam .... Appellant

versus

Nowshad Ali and others .... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr.Sanjeev Goyal, Advocate for the appellant (in FAO-1547 of 2015) and for respondent No.3 (in FAO-561 of 2015).

Mr.Amandeep Rana, Advocate for respondent No.1 (in FAO No. 1547 of 2015) and for the appellant (in FAO No. 561 of 2015).

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REKHA MITTAL J. (Oral)

This order shall dispose of FAO No. 1547 of 2015, Shri Ram General Insurance Company Limited vs. Smt.Poonam and others and FAO No. 561 of 2015, Smt.Poonam vs. Nowshad Ali and others as these have emerged out of the same award dated 26.08.2014 passed by the Motor Accident Claims Tribunal, Gurgaon (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Neeraj in a motor vehicular accident that took place on 31.08.2013.

The learned Tribunal assessed income of the deceased at Rs. 4000/-per month, allowed benefit of future prospects to the extent of 50%, deducted 50% for personal expenses, adopted a multiplier of 18 to compute loss of dependency at Rs. 6,48,000/-. Besides loss of dependency, the claimants have been awarded an amount of Rs. 1 lac for loss of love and affection and Rs. 25,000/-towards funeral expenses and transportation making total compensation to the tune of Rs.7,73,000/- payable with interest at the rate of 7.5% per annum from the date of petition till realisation.

The parties shall be referred to as the insurance company and the claimants for sake of convenience.

Counsel for the insurance company has challenged the award primarily on two counts. The first submission made by counsel is that as the deceased was about 16 years of age and was himself driving the motor cycle bearing No.HR-26-AU-6227 at the time of occurrence, he is guilty of contributory negligence, therefore, compensation is liable to be reduced to the extent of negligence attributable to the deceased. Another submission made by counsel is that the claimants in the application for compensation, in column No.6, have assessed income of the deceased at Rs.15,000/- per annum as per Item No.6 of the Second Schedule appended to the Motor Vehicles Act, 1988 (for short 'the Act') for the non-earning member of the family, income assessed beyond Rs.15,000/- per annum is liable to be reduced. In addition, it is argued that there is no evidence on record that the deceased was working and had actual income.

Counsel for the claimants has submitted that the Tribunal has allowed deduction to the extent of 50% despite the fact that the deceased left behind his sister aged about 14 years(minor) besides his parents, therefore, the deduction should be 1/3rd. Compensation under conventional heads needs to be enhanced. It is further argued that the amount of Rs. 50,000/- was spent on medical treatment of the deceased but no compensation in this regard has been awarded.

I have heard counsel for the parties, perused the paper book particularly the award passed by the learned Tribunal.

Be that as it may, it is admitted position of the case that the deceased was about 16 years of age at the time of occurrence and he met with an accident while driving motor cycle bearing no. HR-26-AU-6227. The question before the Court is as to whether the deceased can be attributed contributory negligence on the premise that he was less than 18 years of age at the time of occurrence, therefore, could not get a driving licence to drive a motor cycle. As the deceased was less than 18 years of age and was driving motor cycle, he might have been guilty of committing a traffic offence under the provisions of the Act. However, the mere fact that the deceased was less than 18 years of age itself is not sufficient to attribute negligence to him. In order to appreciate this contention raised by counsel for the insurance company, we have to fall back upon the evidence adduced on record with regard to the manner in which the accident took place. Satish Kumar, one of the alleged eye witness to the occurrence and on whose statement First Information Report was lodged with the police of Police Station Sector 10, Gurgaon, appeared in the witness box as PW2 and tendered into evidence his affidavit Ex.PW2/A by way of examination-in-chief. A relevant extract from his testimony with regard to the manner of accident reads as follows:-

> " *That on 31.08.2013 at about 2.00 PM. Neeraj son of Ranbir Singh was coming from Hayatpur Village to his Village Salag Ki Dhani on his Motor Cycle bearing Registration No.HR-26AU-6227 in a normal speed on his left side of the road, when he reached near mod (turn) of Salag Ki Dhani, in the meantime, a Canter No.DL-1LM-0895 came from opposite side, being driven by Nowshad Ali rashly, carelessly, negligently, in a very high speed with the result the driver of Canter lost his control and hit the Motor Cycle and Neeraj fell down on the road, due to which he had suffered multiple fractures and serious injuries on his various parts of his body. Neeraj died due to head injury multiple fractures and serious injuries on his various parts of his body in the accident. The said accident caused by Canter No.DL-1LM-0895 which was being driven by Nowshad Ali rashly, carelessly and negligently in a very high speed. My statement was recorded by the police, an F.I.R. was also lodged with P.S. Sector-10, Gurgaon against the driver of Canter bearing No.DL-1LM-0895. Copy of FIR is Ex.P.2."*

Satish Kumar was subject to cross-examination by counsel for the respondents before the Tribunal. Nothing material and cogent has been elicited in his cross-examination to create a slightest inkling that the occurrence took place due to any fault attributable to the deceased. The driver of the offending vehicle did not appear in the witness box to counter case of the claimants particularly statement of Satish Kumar, PW2. Under these circumstances, I find myself unable to accept the submissions made by counsel for the insurance company that the deceased is guilty of contributory negligence and compensation is liable to be reduced to the extent of negligence attributable to him.

This brings the Court to loss of dependency assessed by the Tribunal. No doubt, the claimants in the application for compensation have alleged income of the deceased at Rs. 15,000/- per annum as per Second Schedule appended to Section 163-A of the Act. Counsel for the insurance company has not disputed that Hon'ble the Supreme Court of India in **Rajesh and others v. Rajbir Singh and others 2013(3) RCR(Civil)170** has held that the Tribunal is competent to award compensation beyond what has been claimed in the application for compensation. This apart, the Tribunal has an obligation to assess just, reasonable and equitable compensation. In the case at hand, deceased was a student and was not working at the relevant time. Ranbir Singh, father of the deceased, one of the claimants appeared as PW1 and tendered into evidence his affidavit Ex.PW1/A. He has deposed that prior to the accident, deceased was hale and hearty studying in Royal Public Senior Secondary School, VPO Weazirpurm, Gurgaon under CBSE Delhi and was a brilliant student. Copy of Grade Sheet of Secondary School Examination(Session 2011-2013) is Ex.P1. There is no challenge to his testimony with regard to document Ex.P1 or the deceased being a student of Royal Public Senior Secondary School, VPO Wazirpur, Gurgaon. In ***Krishan Gopal and another v. Lala and others, 2013(4) RCR(Civil) 277,*** Hon'ble the Apex Court assessed notional income of deceased aged about 10 years who died in accident on 19.07.1992, at Rs. 30,000/- per annum. The deceased here was about 16 years of age and was already a Matriculate. Getting a clue from the judgment in Krishan Gopal's case(supra) coupled with educational qualification of the deceased, I do not think it to be a fit case where the Court should refrain from assessing reasonable compensation merely because the claimants have stated income of the deceased to be Rs. 15,000/- per annum. In view of the facts and circumstances discussed hereinbefore, I do no find any reason to interfere in assessment of income by the Tribunal at Rs. 4000/- per month. As the deceased was the only son of the family and was bound to work and earn livelihood for himself and the family, it cannot be said that had he remained alive, he would have stagnated at income of Rs. 4000/- month. This being so, the Tribunal has rightly extended benefit of future prospects for computing loss of dependency. The contention of the claimants that deduction should be $1/3^{rd}$ in place of 50% is misconceived and deserves to be rejected. Merely because the deceased has left behind his younger sister, she cannot be held to be dependent upon the deceased particularly in the circumstances that father of the deceased aged about 38 years is alive and healthy.

In view of the above, findings recorded by the Tribunal computing loss of dependency at Rs. 6,48,000/- are liable to be affirmed and ordered accordingly.

The Tribunal has awarded an amount of Rs. 1.25 lacs under conventional heads and the same is affirmed.

So far as plea of the claimants for reimbursement of the medical expenses, the injured victim passed away on 31.08.2013, the day he sustained injuries in the occurrence. There is no documentary proof with regard to any expenses incurred on his medical treatment. Therefore, prayer for grant of compensation on medical expenses has rightly been negated by the Tribunal.

For the foregoing reasons, both the appeals fail and are accordingly disposed of leaving the parties to bear their own costs. The statutory amount of Rs. 25,000/- deposited in this Court is ordered to be remitted to the Tribunal.

(REKHA MITTAL)
JUDGE

November 08, 2016
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No