IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 934 of 2015 (O&M)
Date of decision: 16.05.2016

Gurmeet Kaur and others

... Appellants

versus

Mahavir Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Jagjit Singh Chatrath, Advocate for the appellants.

Mr. Jasbir Singh, Advocate for respondent No.1.

Mr. Sanjeev Goel , Advocate for respondent No.2.

Ms. Vandana Malhotra Additional AG Haryana.

K.Kannan, J. (ORAL)

Head Constable Suresh Kumar, Police Station Dirba, District Sangrur is present in Court with record of the FIR. State counsel explains that there was an information received about the involvement of the 1st respondent record in an accident in the same day namely on 03.11.2012.The criminal case is reported to be pending before the competent jurisdictional Magistrate. I have vouched for myself the correctness of the information furnished to this Court through A1 which is the copy of the FIR. The original file is returned to the Investigating Officer and his presence is dispensed with.

The appeal is against the dismissal of the petition seeking for compensation for death of a male aged about 40 years. He was said to be have retired from the Indian Army and getting a pension of Rs. 13,019 per month. Before his death he had obtained the divorce from his wife and the claimants were only the mother and two of his minor children. The accident had said to have taken place when he was traveling in a motor bike which collided with 1st respondent's vehicle. The occurrence took place on 03.11.2012 and there was a telephonic message received from the hospital to the police on the same day. He was in a hospital in a seriously injured condition and succumbed to injuries on 09.11.2012. The FIR made reference to eye witness account and the fact that the message of the accident was conveyed to the police station telephonically. The driver of the car also admitted to the accident but denied that there was any negligence on his part. The Tribunal dismissed the petition on the ground that there was no appropriate explanation given for the delay in filing the FIR. It accepted the explanation that there was no negligence attributed to the driver even when it was pointed out to the trial that the criminal case has been registered against the driver of the car and he was still facing trial.

No one comes to road to get killed and if in a collision between two motor vehicles, the death ensues, there must be a convincing evidence that the deceased himself had contributed to the accident. Although the issue of negligence will be at all times established by the claimants, the nature of evidence before the Motor Accident Claims Tribunal and the burden of proof is indeed very light. We are moving towards strict liability norms and I find nothing exculpatory for the driver of the car to plead for full exoneration of liability. If the involvement of the insured car was also admitted fact, the delay must be seen as having resulted in the situation where the police itself did not escalate the information through telephone to immediate registration of the complaint by eliciting the detail from the person who had later registered the complaint. It is just as well possible that since the deceased was in an injured condition, the police itself delayed the registration of the complaint in order to secure the statement from the deceased himself. Evidently, he was in too serious a condition, for, the post facto situation would reveal that he had died on 09.11.2012. I will find that the delay in registration of FIR was due to adequate reasons of the serious condition of the deceased himself and the dismissal of the claim petition before the Tribunal was wholly unjustified. I set aside the finding and hold the 1st respondent's vehicle as responsible for the accident and the injured to be jointly liable and provide for indemnity to the owner, as well, for the award that has to be passed.

The income received by the deceased as pension is reflected in the Bank records that reveal the same to be Rs. 13,019/- per month. I will make no provision for further prospect of increase and take the component of what would be possible as enabling the children also to claim the pension as relevant and take the income of Rs. 13,019/- and make a deduction of 1/3rd for personal expenses. Considering the fact that the wife has already been divorced and the children would required to be supported and guided for the rest of the minority and had money in their lives, I award the compensation of Rs. 2,00,000/- for the children and mother towards loss of love and affection and tabulate the various heads as under:

Fatal	Date of accident	03.11.2012	
Age		40	
Occupation		Pensioner	
Claimants		Mother, minor children	
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income		13,019
2.	Add, % of increase, 30%/50%		

3.	Deduction, 1/2, 1/3, 1/4,		8679.33
4.	Multiplicand		1,04,151/-
5.	Multiplier		15
6.	Loss of dependence		15, 62, 280/-
7.	Medical Expenses		94,187/-
8.	Loss of Consortium		
9.	Loss of love and affection		2,00,000/-
10.	Loss to estate		5,000/-
11.	Funeral Expenses		25,000/-
	Total		18, 86, 467/-

The total compensation will be Rs. 18,86, 467/- and this would also attract interest from the date of the petition till the date of payment. The amount assessed will be disbursed amongst the children and the mother of the deceased in the ratio of 2:2:1 respectively. This would mean that 1/5 of the total amount of what is assessed with interest will be paid to the mother of the deceased forthwith and as regards the share of the minor children they will be invested in the fixed deposit in some nationalized bank yielding interest and the accruals of interest shall be paid to the mother of the deceased as a guardian for the maintenance of the children. The deposit will be held during the entire period of respective minority, and 75% of the same will be ordered to be released on the respective dates of majority of the children. The rest of 25% for each of the minor share will be invested during the period of majority for a further period of 3 years and split the amounts into 3 portions, 1st portion for a period of one year, 2nd for two years and 3rd for 3 years.

The amounts will be disbursed by the Bank directly to the party or electronically transferred to their accounts, the details of which the claimants are at liberty to furnish to the Bank if the amounts are maintained in any other bank.

The decree of the dismissal is set aside and the appeal is allowed on the above terms.

(K.KANNAN)
JUDGE

10.05.2016
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