IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1312 of 1994 (O&M)
Date of Decision: May 19, 2017

Nasib Kaur and others

..Appellant(s)

Versus

Gurdial Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashok Jindal, Advocate
for the appellants.

Mr. Vinod Choudhari, Advocate
for respondent no.3-insurance company.

*****

ANITA CHAUDHRY, J.

This is the claimants' appeal seeking enhancement in the award dated 18.03.1994, passed by the Motor Accident Claims Tribunal, Ambala.

The record of this file had been burnt in the fire incident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

Roop Singh aged 35 years died in an accident on 05.09.1991. Roop Singh was stated to be an agriculturist and earning

Rs.18000 - Rs.19000/- per month and owned 20 acres of land. It was pleaded that the police did not take any action against the tanker driver, no postmortem was conducted and the police had asked them to cremate the body saying that they would take action against respondent no.1 and no FIR was registered nor the driver was arrested or challaned, however, a report was lodged on the same day but it was under pressure at the instance of respondents no.1 & 2 who were their relatives. They were made to sign some blank papers under pressure.

Respondents no.1 & 2 took the plea that Balwinder himself had reported the incident to the police that the piston of the motorcycle developed a snag and the motorcycle went out of control and struck against oil tanker and there was no negligence on the part of respondent no.1.

The Tribunal accepted the version of Balwinder Singh that he was made to sign on blank papers and an accident had occurred and the claimants could get compensation. The Tribunal rejected the statement with respect to the income and held that there was no document to show that the deceased owned any land or had taken any land on lease. His income was taken as Rs.1,500/- per month as that of a labourer and deducting 1/3rd towards personal expenses, the calculations were made applying the multiplier of 16. The compensation was calculated at Rs.1,92,000/.

The submission on behalf of the appellants is that the statements of the witnesses should have been accepted and the deceased was wrongly taken as a labourer and the deduction of 1/3rd was wrongly made as the deceased had left behind four minor children. It was urged that he was not aware whether the parents of the deceased were still alive as the matter was old. It was urged that an addition towards future prospects should have been made and the claimants were entitled to compensation for loss of consortium, funeral expenses and loss of estate.

The submission on the other hand was that the insurance company should have filed an appeal in this case as it was a case of fraud and there is no FIR, no postmortem report and still the Court has relied upon the statement and awarded compensation. It was urged that Balwinder had made a statement that the motorcycle had developed a snag and it went out of control and hit the tanker and the Tribunal had wrongly accepted his statement and the claimants should not have filed any appeal and should have been satisfied with the award. He had also urged that the driver was not holding the licence to drive a tanker.

No appeal or cross-objections have been preferred, therefore, the issues raised by the respondent cannot be gone into. So far as the income is concerned, there was absolutely no evidence that the deceased owned any land or had taken any land on lease. Had he been a land owner, the claimants could have easily produced the Jamabandis. If for a moment it is taken that he did own land even then, land would remain with the family and only services of a manager would be required. Therefore, no change is required in the income. However, considering the large number of family members I would make deduction of 1/5th and the calculations have to be made again taking the contribution to be Rs.1,200/- per month and the compensation would work out as Rs. 1,200/- x 12 x 16 = Rs.2,30,400/-. Since the incident had occurred in 1991, a sum of Rs.15,000/- is added for loss of consortium, Rs.15,000/- for loss of love & affection for the children and Rs.5,000/- as funeral expenses, raising the total to Rs.2,65,400/-.

The Tribunal had awarded Rs.1,92,000/-, which would be deducted and Rs.73,400/- would be payable to the appellant with interest @ 6% from September, 1994.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 19, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No