IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.764 of 1991(O&M)
Date of Decision-19.12.2017

Himanti Misra and another ... Appellants

Versus

Ajay Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. I.S. Vimal, Advocate
for the appellants.

Mr. R.N. Singhal, Advocate
for respondent No.4.

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__RAJ MOHAN SINGH, J.__

[1]. Appellants have preferred this appeal against the award dated 17.11.1990 passed by Motor Accident Claims Tribunal, Jalandhar (for short 'the Tribunal') vide which pulpably low compensation has been awarded.

[2]. The accident took place on 02.07.1988 when the car belonging to Veena Kalra met with an accident with mini bus on Jalthandhar-Pathankot road. The four claim petitions were filed for compensation on account of deaths of Veena Kalra, O.P. Kalra, Neerja Misra and A.K. Misra. All the four claim petitions were consolidated and common award was passed.

[3]. On 02.07.1988, Priyanka, Monika Kalra, Shurat Kirti Kalra and their parents O.P. Kalra and Veena Kalra along with A.K. Misra and his daughter Neerja Misra were travelling in a car belonging to Veena Kalra. After visiting Holy Shrine of Vaishno

Devi, they left Katra on 02.07.1988 and at about 1 PM when they were travelling at Pathankot-Jalandhar road, their car met with an accident with a mini bus which was being driven by respondent No.1 and except three minor children, all the occupants of the car died.

[4]. The claim petitions were contested by the respondents.

[5]. The Tribunal decided issue No.1 in all the four claim petitions in favour of the claimants and against respondent No.1. While deciding liability to pay compensation, the Tribunal held that Insurance Company was not liable to pay the compensation, rather the liability was fastened upon the driver and owner of the vehicle.

[6]. In MACT No.147 of 1988 filed by the claimants/appellants, the income of the deceased A.K. Misra was sought to be proved by his widow Himkanti Misra (AW 3) who stated that deceased A.K. Misra was 39 years of age at the time of accident and was drawing salary of Rs.1950/- per month. Salary certificate issued by the Principal of College was produced in respect of last pay drawn by the deceased A.K. Misra. There was no rebuttal to the aforesaid evidence in respect of age and income of deceased A.K. Misra. In view of above, the annual income of deceased A.K. Misra was calculated to be Rs.23,400/-. After deducting an amount of Rs.5480/- towards personal

expenses, the dependency of the claimants was calculated to be Rs.18,000/- per annum. Keeping in view the age of the deceased, a multiplier of 16 was applied and total amount of compensation was calculated to the tune of Rs.2,88,000/- along with interest @ 12% per annum from the date of filing of the claim petition till final realization of the amount.

[7]. The aforesaid claim petition was decided by the Tribunal in the year 1998. Thereafter, an appeal was filed in the High Court. Due to fire incident in the High Court, the record of the present appeal was burnt in the year 2011. At one point of time, the appeal was dismissed for non-prosecution on 20.01.2014, but the same was restored on 01.03.2016. The Tribunal has held that the age of the deceased was 39 years at the time of accident. Since the deceased was working in the college, therefore, keeping in view the age of the deceased and in view of judgment passed by Hon'ble Apex Court in ***Special Leave Petition (Civil) No.25590 of 2014*** decided on 31.10.2017 titled ***National Insurance Company Limited Vs. Parnay Sethi and others***, the future prospects to the tune of 50% has to be calculated while assessing income and dependency of the family. Monthly income of the deceased as per salary certificate was Rs.1950/-. After calculating 50% of the income, the amount comes out to be Rs.975/-, therefore, total monthly income of the deceased comes out to be Rs.2925/-. Keeping in view the composition of the family, 1/4th deduction can be applied towards

personal expenses of the deceased. After due calculation, dependency of the deceased in round figure comes out to be Rs.2194/- per month i.e. 26,328/- per year. Keeping in view the age of the deceased and in view of ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77***, a multiplier of 16 can be applied. In this way, total amount of compensation comes out to be Rs.4,21,248/-. To the aforesaid amount, conventional head amount to the tune of Rs.70,000/- can be added in view of judgment passed by Hon'ble Apex Court in ***Special Leave Petition (Civil) No.25590 of 2014*** decided on 31.10.2017 titled ***National Insurance Company Limited Vs. Parnay Sethi and others***. Further a sum of Rs.50,000/- can be added towards loss of love and affection to the appellants. In this way, total compensation payable to the complaints comes out to be Rs.5,41,248/- rounded of to Rs. 5,41,250/- (4,21,248+70,000+50,000=5,41,248/- rounded of to Rs.5,41,250/-). The Executing Tribunal shall work out the balance compensation to be paid to the claimants in the aforesaid manner. The enhanced compensation payable to the claimants shall carry interest @ 9% per annum from the date of filing of the claim petition till final realization of the amount.

[8]. Connected appeal i.e. FAO No.605 of 1991 titled Priyanka @ Sonia Kalra and others Vs. Ajay Kumar and others has already been decided by the Co-ordinate Bench of this Court vide order dated 25.02.2011 vide which two claim petitions

were decided. Objection with regard to maintainability of single appeal was not debated in the said appeal and the said appeal was disposed of, thereby holding the Insurance Company liable to pay the compensation. The factum of decision rendered in FAO No.605 of 1991 has not been disputed by learned counsel for the Insurance Company.

[9]. For the reasons recorded hereinabove, this appeal is disposed of, thereby modifying the impugned order to the extent as indicated hereinabove. The Insurance Company has to answer the claim as held in FAO No.605 of 1991.

(RAJ MOHAN SINGH)
JUDGE

19.12.2017
Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No