IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1144 of 1999
Date of Decision: August 04, 2017

Angoori Devi and another

......Appellants

versus

Satwinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present: Mr. Rajesh Arora, Advocate
for the appellants

Mr. R.N. Singal, Advocate
for respondent No. 3 – Insurance Company

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Sudhir Mittal, J.

The claimants are the mother and father of deceased Pardeep Kumar. He died in an accident which took place on 19.04.1996. At the time of his death, he was unmarried, aged 23 years and working in M/s Amar Sweets and Dairy, Sector-41, Chandigarh.

Respondents No. 1 and 2 are the driver and owner, respectively of truck No. PAT-9779 with which the accident took place, resulting in death of Pardeep Kumar. Respondent No. 3 is the Insurance company with which the truck was insured. Respondents No. 1 and 2 are not represented before this Court and were proceeded ex-parte even before the MACT, Ambala. Since it is not in dispute that the offending truck was insured with respondent No. 3, I am proceeding to decide this case in their absence.

On the date of the accident, Pardeep Kumar was riding his scooter

HNL-777 and was proceeding towards petrol pump in Sector 41, Chandigarh. He was driving on the left side of the road. When he reached the Church near village Buterala, the offending truck came from the opposite side and hit the scooter resulting in serious injuries to the deceased. The accident was witnessed by one Daljit Singh son of Norata Singh, who took the deceased to PGI, Chandigarh, where he succumbed to his injuries. The MACT, Ambala determined the compensation of ₹ 1,24,000/- recoverable from all the respondents jointly and severally alongwith interest @ 12% p.a. from the date of institution of the petition till realization, to be divided equally between both the claimants.

Aggrieved by the said award the claimants have filed the present appeal.

I have heard learned counsel for the parties and have perused the record.

The issues raised in this appeal are as follows:-

(i) Whether accident dated 19.4.1996 in the area of Police Station, Sector-39, Chandigarh, resulting into the death of Pardeep Kumar took place due to rash and negligent driving of Truck No. PAT 9779 ? If so to what effect? OPP

(ii) Whether the claimants are entitled to compensation on account of death of Pardeep Kumar, if so to what amount? OPP

(iii) Whether the offending vehicle was being driven without valid driving licence and other documents, as alleged? OPR

(iv) Whether the Insurance Company is not liable? OPR

(v) Relief.

The Tribunal found on the basis of evidence on record that Pardeep Kumar died due to accident caused by the offending truck on 19.04.1996 and that the driver of the offending truck was driving the same in a rash and negligent manner. No meaningful argument in this regard has been addressed by counsel for the Insurance Company and, therefore, the finding is upheld. It may not be out of place to mention that the owner and driver were proceeded against ex-parte before the learned Tribunal. They also did not choose to file any appeal against the impugned award. Respondent No. 3 has also not preferred any appeal/cross objections against the impugned award.

The only issue that remains to be decided is regarding the quantum of compensation that the claimants are entitled to. It is not in dispute that the deceased Pardeep Kumar was aged 23 years when he died and that he was unmarried. His mother had deposed as PW-2 and had stated that he was earning ₹ 3500/- per month. During cross-examination she stated that she had four sons, one out of whom was married and residing separately and was doing labour work.

Learned Tribunal assessed the income of the deceased as ₹ 1,800/- per month because there was no documentary proof to support the statement of PW-2. The deceased was treated as a casual labourer. I am of the opinion that the income of deceased was assessed on the lower side. He should have been treated as a skilled labourer because he was engaged in preparation of sweets in a sweetmeat shop. I, therefore, assess his income at ₹ 2500/- per month being minimum wages being drawn by a skilled labourer. To this income future prospects have to be added as held by the Supreme Court in the case of ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54***. This judgment has been subsequently followed by another three judge Bench in ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) PLR 304***. Accordingly, 50% of the monthly income of the deceased has to be added to his monthly income on account of future prospects as the deceased was less than 40 years of age on the date of his death. Thus, the monthly income would become ₹ 3,750/-. A deduction of 50% would have to be made since the deceased was unmarried and the monthly dependency works out to ₹ 1,875/-. The annual dependency would be ₹ 22,500/-.

It is stated by learned counsel for respondent No. 3 that the matter regarding future prospects is pending adjudication before a larger Bench of five judges by virtue of decision dated 2.7.2014 in ***National Insurance Company Limited vs. Puspa and others, 2015(9) SCC 166***. It is true that the issue is pending adjudication before a larger Bench but I am placing reliance upon decision dated 15.05.2015 in the case of ***Munna Lal Jain's case (supra)***. The decision in ***Munna Lal Jain's case (supra)*** is later in point of time than the decision in ***Pushpa's case (supra)***. Further, both the conflicting decisions i.e. ***Rajesh's case (supra)*** and ***Reshma Kumari and others vs. Madan Mohan and another, 2013(9) SCC 65,*** have been cited before the Bench in ***Munna Lal's case (supra)***.

The deceased was 23 years of age, hence, multiplier of 18 is to be applied on the basis of decision of the Hon'ble Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(6) SCC 121***.

Learned counsel for respondent No. 3 has submitted that the multiplier has to be applied taking into consideration the age of the parents of the deceased. I, however, reject this argument by relying upon ***Munna Lal Jain's case (supra)*** wherein it has been held that multiplier has to be assessed by keeping in view the age of the deceased.

Thus, the compensation is assessed as follows:-

(i) Loss of dependency - ₹ 22,500/- per annum

(ii) Multiplier of 18

(iii) Total compensation - ₹ 4,05,000/-

I, further, grant ₹ 1,00,000/- (₹ 50,000/- each for the parents) towards loss of love and affection. In my opinion even the father would be entitled to be compensated on account loss of love and affection, even though there is no evidence on record that he was dependent on the deceased. ₹ 25,000/- is granted towards funeral expenses and ₹ 2,500/- is granted towards loss of estate. The total compensation, therefore, works out to ₹ 5,32,500/-. The said compensation would be divided equally between the claimants and payable alongwith interest @ 6% p.a. from the date of filing of claim petition till the date of realization.

The appeal is, accordingly, allowed with no costs.

August 04, 2017 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No