IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2999 of 2010
Date of decision:- May 18, 2017

RAM LAL AND ANOTHER ....APPELLANTS..

VS.

BALBIR RAM AND OTHERS ....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Vipan Sharma, Advocate for
Mr. S.M. Sharma, Advocate,
for the appellants.

Mr. Rajesh K. Sharma, Advocate,
for respondent No.4.

Mr. Binat Sharma, Advocate for
Mr. A.S. Sidhu, Advocate,
for respondent No.7.

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JASPAL SINGH, J.

Aggrieved against the inadequacy of compensation awarded vide award dated 24.12.2009 passed by Motor Accident Claims Tribunal, Ambala (for brevity, "Tribunal" only) on account of death of Jai Bhagwan in a vehicular accident occurred on 29.09.2006 near Shahzadpur on Ambala-Naraingarh road, due to rash and negligent driving of Tata Tipper No.HR-58-8607 by its driver Balbir Ram-respondent No.1, appellants-claimants have preferred the instant appeal.

2. Assailing the impugned award dated 24.12.2009, it has been argued by learned counsel for the appellants that ld. Tribunal has assessed the income of the deceased only to the tune of ₹3000/- whereas, it stands proved on record that he was earning ₹8000/- per month. However, ld.

Tribunal has applied a multiplier of 13 only whereas multiplier of 18 should have been applied keeping in view the age of the deceased, who was 20 years of age at the time of his unfortunate demise.

3. It has further been urged by learned counsel for the appellants that ld. Tribunal has discharged the insurance company from the liability to pay the compensation, just on the ground that owner has not produced the driving license on record in original. Moreover, insurance company has also not disputed that the offending vehicle was insured with respondent No.3, therefore, the payment of compensation awarded by ld. Tribunal should have been ordered to be paid firstly by the insurance company and then the insurance company should have been given the recovery rights to recover the same from the owner/driver. Thus, impugned award dated 24.12.2009, deserves to be modified.

4. On the other hand, learned counsel for the respondents have supported the impugned award dated 24.12.2009 and has submitted that just and adequate compensation has already been awarded by the ld. Tribunal. There is no illegality and infirmity in the impugned award. Thus, appeal being devoid of merit is liable to be dismissed, that too, with special costs.

5. After bestowing due consideration to the rival submissions made by learned counsel for the parties, appraisal of evidence and scanning the impugned award dated 24.12.2009, this Court does not find any legal and factual substance in the various submissions made by learned counsel for the appellants.

6. Undisputably, the income of the deceased has been assessed to the tune of ₹3000/- per month, who was aged about 20 years at the time of accident. Since, there is no documentary evidence in support of the income

being earned by the deceased, the assessment of his income to the tune of ₹3000/- is legally and factually justified. However, ld. Tribunal has deducted 1/3rd of his income, which deceased would have incurred towards maintaining himself had he been alive. But since, deceased was unmarried aged about 20 years, as per the guidelines highlighted in ***"Smt. Sarla Verma and others v. Delhi Transport Corporation and another" 2009(3) RCR (Civil) 77,*** the deduction was to be made to the extent of ½. As such, the dependency of the claimants works out to ₹1500/- per month. Ld. Tribunal has adopted the multiplier of 13 by considering the age of the deceased as well as his parents, but in view of the judgment captioned as ***"Munna Lal Jain and another v. Vipin Kumar Sharma and others;2015(3) SCC (Civil) 315,*** multiplier is to be applied with reference to the age of the deceased and not the age of dependents of deceased. Thus, in view of the age of the deceased, multiplier of 18 should have been applied. As such, total amount of compensation on account of loss of income comes to ₹3,24,000/-(1500x12x18).

7. Here, it would also be pertinent to mention that neither any compensation has been awarded by ld. Tribunal on account of funeral expenses nor on account of loss of love and affection whereas the amount of compensation awarded in lump sum is unjust and inadequate, especially, in view of the guidelines laid down in ***"Smt. Sarla Verma and others's case (supra)*** which has subsequently been approved in case captioned as ***"Rajesh vs. Rajbir 2013 (3) RCR (Civil) 170***. As per the guidelines, the appellants/claimants being the parents of the deceased are entitled to compensation to the tune of ₹1,00,000/- on account of loss of love and affection and further entitled to a sum of ₹25,000/- on account of funeral

expenses. Thus, the total amount works out to ₹4,49,000/-, to which the appellants-claimants are entitled on account of death of Jai Bhagwan. As such, appellants-claimants are entitled to enhanced compensation to the tune of ₹1,32,000/- as against the compensation of ₹3,17,000/- already awarded by the ld. Tribunal vide impugned award dated 24.12.2009.

8. It would also be pertinent to mention that the insurance company has already been discharged by ld. Tribunal from its liability to pay the compensation. An appeal was also preferred by owner as well as driver challenging their liability to pay the compensation as the vehicle in question was duly insured with the insurance company i.e. respondent No.4 but unfortunately, the said appeal stood dismissed whereby the owner and driver of the offending vehicle bearing registration No.HR-58-8607 held liable to pay the compensation.

9. As a sequel of the aforesaid discussion, appeal is partly allowed. Appellants-claimants shall be entitled to enhanced amount of ₹1,32,000/- in addition to the compensation already awarded. Respondents No. 1 to 3 are directed to pay the amount so enhanced within a period of two months from the date of receipt of certified copy of this order and on its failure to make the payment within stipulated period, it would entail interest @ ₹7.5% per annum from the date of filing of the claim petition before the Tribunal till its realization.

10 Parties to bear their own cost.

May 18, 2017 **(JASPAL SINGH)**
sonika **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable: Yes