IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4593 of 2010
Date of Decision-11.07.2017

Dinesh Chand and another ... Appellants
Versus
Akhil Goyal and others ... Respondents

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

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

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. Appellants have prayed for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Palwal (for short ‘the Tribunal) in respect of death of Sandeep Jain son of the appellants.

[2]. On 19.01.2008, Sandeep Jain (deceased) had gone to attend the marriage of Nitin Garg in Deep Farms in Maruti Alto car along with Lalit Kumar Aggarwal, Parveen and Anuj. When they went to Ballabgarh for some work after attending the marriage and were returning from Ballabgarh to Hodal, then within the revenue estate of Seekri near Hari Om Hotel, accident took place due to rash and negligent driving of Akhil Goyal (respondent No.1) when the car struck against the divider and turned turtle, resulting in serious injuries to Sandeep Jain, which ultimately proved fatal in causing his death. Appellants-claimants alleged that Akhil Goyal (respondent No.1) and Satish Kumar

(respondent No.2) did not report the matter to the police correctly. Appellants claimed compensation to the tune of Rs.10,00,000/-.

[3]. The claim petition was contested by the respondents. Respondents No.1 and 2 admitted the fact that Sandeep Jain (deceased) along with Parveen, Lalit Kumar and Anuj were co-occupying the Maruti Alto car. On the fateful day, when they were returning from Ballabgarh, a blue ox came on the road in front of the vehicle and the accident in question had taken place without negligence on the part of respondent No.1. The vehicle was insured with respondent No.3. Respondent No.3 also contested the claim petition on the ground that the driver was not holding a valid driving licence. The insured had violated the terms and conditions of the insurance policy. The locus of the appellants being legal representatives of Sandeep Jain (deceased) was also challenged. The contents of the DDR were also claimed to be false.

[4]. The Tribunal framed necessary issues. Thereafter, both the parties led evidence. The claimants produced Anuj Jain, eye witness of the accident as PW 1 who supported the case of the claimants while disclosing the manner in which the accident had taken place. The income of Sandeep Jain (deceased) was proved by way of income certificates Exs.P1 and P2. Dinesh Chand also appeared as PW 3 and also supported the case of

the claimants. Death certificate of Sandeep Jain (deceased) was tendered as Ex.P3 along with postmortem report Ex.P4 and TDS certificate Ex.P5. Copy of DDR was exhibited as Ex.P6 and thereafter, claimants closed the evidence.

[5]. Respondents also led evidence. Respondent No.1 appeared as RW 1 and tendered his affidavit in support of written statement. He also tendered his driving licence as Ex.R1, copy of registration certificate Ex.R2 and photocopy of MLR Mark A. Respondent No.3 also tendered copy of insurance policy Ex.R3 and thereafter closed the evidence.

[6]. After hearing learned counsel for both the parties, the Tribunal decided the issue No.1 in favour of the claimants by holding that the accident in question took place due to rash and negligent driving of respondent No.1. Under issue No.2, the Tribunal took cognizance of salary certificate (Ex.P2) of Sandeep Jain (deceased), wherein his salary was shown to be Rs.80,000/- for a particular period. The claimants have produced salary certificate Ex.P2 of deceased Sandeep Jain amounting to Rs.26,000/- for the period commencing from 01.04.2006 to 31.03.2007. The status of deceased Sandeep Jain was shown to be a Supervisor in the Firm M/s Parkash Chand Padam Chand & Sons Commission Agent, Nai Anaj Mandi, Hodal. The claimants have also produced evidence viz. Ex.P5, vide which they intended to prove that Sandeep Jain (deceased) was working

with Profit Max Company and the said company was deducting TDS on account of the amount paid to Sandeep Jain (deceased). The proprietor of M/s Parkash Chand Padam Chand & Sons was examined as PW 2 who had proved the salary certificates Exs.P1 and P2. At the time of filing of the claim petition, the status of Sandeep Jain (deceased) was shown to be self employed and the occupation was described as that of partner in partnership in Rice Mills having 25% shares and also working as agent in ICICI Lombard Insurance Company.

[7]. The Tribunal considered that the evidence led by the claimants was not in consonance with the pleadings of the claimants and any evidence led beyond the pleadings could not be considered unless and until evidence was clinching and trustworthy in nature. Though proprietor of M/s Parkash Chand Padam Chand & Sons has deposed in the context of salary certificates Exs.P1 and P2, but the evidence in respect of income tax returns of the said firm was not produced by the proprietor. In this context, the Tribunal held that the documents could not be believed. Working with the Profit Max Company was not claimed to be of earning profile. On that count also the Tribunal did not consider the evidence to be sufficient for assessing the income of Sandeep Jain (deceased). The Tribunal only assessed the income of Sandeep Jain (deceased) to the tune of Rs.3600/- per month on notional basis. Sandeep Jain (deceased) was unmarried of 24 years of age. The age was proved from

postmortem report Ex.P4. The dependency of the claimants was assessed to be 50% i.e. Rs.1800/- per month and annual dependency was assessed to be Rs.21,600/- After applying multiplier of 18, the amount was assessed to be Rs.3,88,800/- An amount of Rs.10,000/- was assessed towards funeral expenses, loss of consortium and loss of estate. In this way, total amount of Rs. 3,98,800/- was awarded as compensation along with interest @ 9% per annum from the date of filing of the claim petition till final realization of the amount. In view of evidence led by the respondents, the vehicle was found to be insured and liability was held to be joint and several of the respondents. The amount was ordered to be deposited in a fixed deposit for a period of 3 years in the shape of FDR along with other necessary directions.

[8]. Learned counsel for the appellants submitted that the salary certificates viz. Exs.P1 and P2 were duly proved by way of statement of PW 2 Rajinder Jain, proprietor of M/s Parkash Chand Padam Chand & Sons Commission Agent, Nai Anaj Mandi, Hodal, therefore, income of deceased Sandeep Jain should have been assessed as per the salary certificates.

[9]. Having considered the aforesaid submissions in the light of evidence on record, it can be appreciated that the claimants have not taken the uniform stand in the pleadings. As per their own case, Sandeep Jain (deceased) was working with

Profit Max Company and the said company was also deducting TDS on the amount paid to Sandeep Jain (deceased). The statement of PW 2 Rajinder Jain, proprietor of M/s Parkash Chand Padam Chand & Sons Commission Agent, Nai Anaj Mandi, Hodal in respect of issuance of salary certificates Exs.P1 and P2 was discarded by the Tribunal on the premise that proprietor of the firm M/s Parkash Chand Padam Chand & Sons Commission Agent, Nai Anaj Mandi, Hodal could not prove the income tax returns of the firm and the account statements from where it could have been proved that Sandeep Jain (deceased) was in fact working as Supervisor in the said firm, the said plea was discarded in view of the pleadings made by the claimants themselves by taking the stand that Sandeep Jain (deceased) was working with Profit Max Company and the said company was deducting the TDS. The claimants did not stop here in terms of pleadings, rather they proceeded to take the stand that Sandeep Jain (deceased) was self employed and regarding his occupation, they claimed that he was having 25% partnership in Rice Mills and he was also agent in ICICI Lombard Insurance Company. From the pleadings of the claimants, it could not be ascertained that as to what was the occupation of Sandeep Jain (deceased) at the time of his death. The Tribunal considered him as casual labour and assessed the monthly income to the tune of Rs.3600/- on notional basis. In considered opinion of this Court, the aforesaid fixation of monthly income to the tune of Rs.3600/-

cannot be faulted with in view of pleadings of the claimants themselves. Since Sandeep Jain (deceased) was unmarried and 24 years of age, he was having future prospects. If the amount to the tune of 50% of the income met for future prospects in terms of ***Rajesh and others Vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170*** is considered, than the monthly income of Sandeep Jain (deceased) would come out to be Rs.5400/- (3600+1800=5400). Since Sandeep Jain (deceased) was unmarried, therefore, 50% of the income can be deducted towards self expenses of Sandeep Jain (deceased). The monthly dependency of the claimants can thus be calculated as Rs.2700/- and Rs.32,400/- per year. Keeping in view the age of Sandeep Jain (deceased) and in view of ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** a multiplier of 18 would be just and appropriate and after applying the multiplier of 18, the amount comes out to be Rs.5,83,200/-. The claimants are parents of Sandeep Jain (deceased), therefore, an amount of Rs.1,00,000/- each i.e. Rs.2,00,000/- towards loss of love and affection in view of ratio laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, 2013(2) RCR (Civil) 945*** would be just and appropriate under this head. The claimants are also held entitle to an amount of Rs.25,000/- towards funeral expenses. In this way, total amount of compensation would come out to be Rs.8,08,200/- (5,83,200+2,00,000+25,000 =8,08,200). Therefore, there shall be an enhancement of Rs.4,09,400/- (8,08,200-3,98,800=4,09,400).

[10]. The enhanced amount of Rs.4,09,400/- shall carry interest @ 7.5% from the date of filing of claim petition till final realization of the aforesaid amount. However, the enhanced amount shall be paid to the appellants without insisting upon the deposit of the same in the FDR as per directions made by the Tribunal while deciding the claim petition on 10.04.2010.

[11]. With the aforesaid modification, the present appeal stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

11.07.2017
Prince

Whether reasoned/speaking Yes/No

Whether Reportable Yes/No