IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 4777 of 2010 (O&M) and
Cross Objections 234 CII of 2016
Date of decision: 04.09.2017

United India Insurance Co Limited, Dabhawali ....Appellant

Versus

Kamlesh Rani and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sanjiv Pabbi, Advocate
for the Insurance Company

Mr. Rajbir Singh, Advocate
for the cross objectors/respondents No. 1 to 3

Mr. D K Singla, Advocate
for respondent No. 7

Mr. Ashwani Talwar, Advocate
for respondent No. 8

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Rekha Mittal, J. (Oral)

CM 18347 CII of 2016

Prayer in this application is for condonation of delay of 2130 days in filing the cross objections.

In view of averments made in the application supported by an affidavit of Chaman Lal son of Brij Lal and arguments advanced by counsel for the applicant, delay of 2130 days in filing the cross objections stands condoned subject to the condition that in case the claimants succeed in getting enhanced compensation, they will forgo interest for the period of delay.

CM 18348 CII of 2016

Prayer in this application is for bringing on record legal representatives of Smt. Kamlesh Rani-respondent No.1 (since deceased).

In view of averments made in the application supported by an affidavit of Chaman Lal, one of the legal representatives, the application is allowed and persons mentioned in para 2 of the application are brought on record as legal representatives of Kamlesh Rani -respondent No. 1 (since deceased) subject to just exceptions for the purpose of present lis.

Amended memo of parties is taken on record.

Main case

This order will dispose of FAO No.4777 of 2010 and cross-objections No.234-CII-2016 as these have emerged out of the same award dated 16.02.2010 passed by the Motor Accidents Claims Tribunal, Sangrur (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded in regard to death of Sukhwinder Kumar in a motor vehicular accident that took place on 02.09.2006.

The first submission made by counsel for the insurance company is that findings of the Tribunal on issue No.1 attributing rash and negligent driving exclusively to Rakesh Kumar driver of truck No. HR-57-0687 are not based upon appreciation of evidence in right perspective, therefore, are liable to be modified. It is argued that Amrish Goel, a traveller in ill-fated Tata Sumo No. PB-03-M-9121 and eye-witness to the accident appeared in the witness box to discharge onus of issue no.1. He has categorically deposed that driver of Tata Sumo was driving the vehicle at a high speed despite request made by the passengers to slow down the speed.

Further argued that Amrish Goel has admitted in his cross examination that at the time of occurrence, there was a dust-storm and heavy rainfall. As the driver of Tata Sumo did not bother to slow down the speed, it is sufficient to attribute rashness and negligence to driver of the said vehicle. It is further argued that even if driver of the Tata Sumo may not be held solely responsible for causing the accident, the present is a case of composite negligence of drivers of Tata Sumo and truck insured with the appellant. The last submission made by counsel is that as both the vehicles are to be attributed negligence in causing the accident, the driver-cum-owner and insurance company of Tata Sumo cannot escape their liability to pay compensation to the extent rashness and negligence can be attributed to Gurmeet Singh, owner and driver of the Tata Sumo.

Counsel for the insurance company, in order to assail compensation assessed by the Tribunal would urge that the Tribunal has assessed income of the deceased on the basis of income tax returns for the year 2006-07 whereas the claimants have produced on record three income tax returns for the years 2004-05 showing income Rs.53,000/-, 2005-06 Rs.71,800/- and latest return for the year 2006-07 Rs.1,04,950.00, therefore, income of the deceased is liable to be assessed by taking out average of the income shown in three income tax returns.

Another submission made by counsel is that the Tribunal has assessed loss of dependency by adopting multiplier of 18 as per age of the deceased whereas multiplier should be as per age of parents of the deceased.

Counsel representing the claimants, on the contrary, has submitted that the deceased was 25 years old but the Tribunal has not allowed benefit of increase in income qua future prospects to the extent of 50% in the light of judgment of Hon'ble the Supreme Court ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170.*** Compensation awarded under conventional heads is grossly inadequate and needs enhancement. The Tribunal has awarded interest @ 6% per annum which is on lower side.

Counsel representing the owner and driver as well as insurance company of Tata Sumo have supported findings of the Tribunal on issue No.1 that driver of the truck alone is responsible for causing the accident as he hit against Tata Sumo coming from the opposite direction and threw the Tata Sumo in ditches resulting in injuries to the driver and passengers of Tata Sumo and two of the passengers of Tata Sumo namely Sukhwinder Kumar and Krishan Kumar succumbed to the injuries sustained in the occurrence. It is further argued that the Tribunal has rightly held that the mere fact that driver of the Tata Sumo was driving at a high speed is not sufficient to attribute rashness and negligence to him for causing the accident.

There is no dispute that the occurrence took place on 02.09.2006 because of collision between truck No.HR-57-0687 and Tata Sumo No.PB-03-M-9121 while the vehicles were running in opposite direction. The claimants as well as Amrish Goel CW-3 examined to prove issue No.1 have raised a plea that driver of Tata Sumo was driving the vehicle at a high speed. It has also come on record that at the time of occurrence, it was raining heavily. There is nothing on record suggestive of the fact that because of high speed of Tata Sumo, the vehicle skidded or swerved towards its right side. On the contrary even if the Tata Sumo was at a high speed but driven on correct side of the road and the truck coming from the opposite direction hit the Tata Sumo and the vehicle was pushed in ditches, it is difficult to accept contention of the appellant that either driver of Tata Sumo can be held exclusively liable for causing the accident or composite negligence can be attributed to him. No doubt, driver of a vehicle on the road is required to take adequate precaution to ensure that brakes of the vehicle are functioning properly and because of the rain, vehicle may not skid and goes in some different direction. In the instant case, counsel for the appellant has failed to point out any materials on record that high speed on the part of driver of Tata Sumo on a rainy day has, in any manner whatever, attributed in causing the accident. That being so, I do not find any error much less illegality in findings attributing sole rashness and negligence to truck No.HR-57-0687 driven by Rakesh Kumar.

The application for compensation in regard to death of Sukhwinder Kumar has been filed by his unfortunate parents and younger brother Kulwinder Kumar. It is not plea of the appellant that Sukhwinder Kumar was on the driving seat or any tortious act in causing the accident can be attributed to the deceased. Assuming that present is a case of composite negligence of two vehicles involved in the accident, the claimants are always at liberty to seek compensation from one of the joint tort feasors. This apart, in a case of composite negligence, the Tribunal is not obligated to determin extent of negligence attributable to the vehicles involved in the occurrence. Analyzed from any angle, I do not find any merit in contention of the appellant that the insurance company of truck in question cannot be fastened with entire liability to pay compensation.

This brings the Court to quantum of compensation assessed by the Tribunal.

As has been noticed hereinbefore, the claimants produced on record income tax returns for the years 2004-05, 2005-06 and 2006-07 Ex.C5, C3 and C1 respectively. The Tribunal has assessed income of the deceased on the basis of latest income tax return for the year 2006-07 depicting income at Rs.1,04,950/-. Perusal of records would reveal that this return was filed by family of the deceased and not by the deceased himself who died in September 2006. Under the circumstances, this Court would rely upon income tax return for the year 2005-06 showing income of Rs.71,800/- as the Court cannot overlook a fact that the claimants generally have the tendency to increase figures of income to claim higher compensation. This apart, the claimants have not produced on record any supporting documents qua income of Rs.1,04,950/- reflected in income tax return for the year 2006-07.

There is no dispute that the deceased was 25 years of age. In view of enunciation laid down in Rajesh's case (supra) addition in income for future prospects to the extent of 50% is admissible. The mere fact that the matter with regard to future prospects is pending before a larger Bench of Hon'ble Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ 1239*** is not sufficient to deny benefit of increase in income for future prospects. Moreover, the deceased was a young boy aged 25 years. There is nothing on record suggestive of the fact that he was suffering from any disability to affect his capacity to work and earn from the business. Accordingly, loss of dependency would be computed after giving benefit of future prospects to the extent of 50%.

The Tribunal has applied multiplier of 18 on the basis of age of the deceased. Taking into consideration the ratio laid down in ***Sarla Verma and others v Delhi Transport Corporation, 2009 (3) R.C.R. (Civil)*** *77* and ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, (2015) 6 SCC 347***, multiplier adopted by the Tribunal cannot be faulted with. In this manner, loss of dependency comes to **Rs.9,69,300.00** (71,800/- p.a. + 50% (F.P) – 50% (deduction)) x18.

Under conventional heads, the claimants shall be entitled to Rs.25,000/- for expenses on funeral, another Rs.25,000/- for loss of estate and Rs.50,000/- for loss of love and affection to the mother. The total compensation comes to **Rs.10,69,300.00** (9,69,300 + 25,000 + 25,000 + 50,000) and the additional amount is **Rs.1,18,300.00** (10,69,300-9,51,000) payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay.

Disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

04.09.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No