IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3556 of 2011
Date of Decision.15.12.2017

Nachhattar Kaur and others ....Appellants

Vs

Onkar Singh and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Lath, Advocate
for the appellants.

Mr. Karminder Singh, Advocate
for respondent No.3.

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AMIT RAWAL J.(ORAL)

The appeal is for enhancement of compensation for death of one Darshan Singh, aged 48 years, who died in a motor vehicular accident occurred on 27.03.2006. The claimants are widow and two sons. He was an agriculturist and stated to be earning ₹20,000/- per month.

Mr. Lath, learned counsel appearing on behalf of the appellants submits that the Tribunal while assessing the compensation of ₹3,88,000/-, took the income of the deceased as ₹40,000/- per annum which is grossly low. It did not provide anything for future prospects, in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi 2017 ACJ 2700.*** Moreover, the amounts provided for loss of consortium, loss of estate and funeral expenses are also on lower side, thus, there is scope for enhancement.

He further argued that the Tribunal has committed illegality and perversity in exonerating the insurance company from satisfying the award on the ground that the offending vehicle did not have a valid permit of relevant State as the accident had taken place within the territorial jurisdiction of Police Station Kiratpur Sahib situated in the State of Punjab. The offending truck had permit valid from 13.06.2006 to 12.06.2011 whereas the starting point and the termination point of journey was Himachal Pradesh to Himachal Pradesh. In view of the provisions of Section 88 of the Motor Vehicles Act, the liability ought to have been fastened upon the insurance company of the truck.

He also relies upon the judgment of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Challa Bharathamma and others (2004) 8 SCC 517*** that even though the insurance company has been exonerated from liability but still it will satisfy the award. However, it will have the liberty to recover the same from the insured in execution proceedings before the Tribunal, thus, the finding of the Tribunal on the issue of liability is required to be modified to that extent.

Per contra, Mr. Karminder Singh, learned counsel appearing on behalf of the insurance company submits that the Tribunal has taken care of all the heads of claims sufficiently and there is no scope for enhancement. As far as the issue of liability is concerned, the offending truck did not have valid permit at the time of accident, therefore, the Tribunal has rightly exonerated the insurance company from indemnification.

I have heard learned counsel for the parties and appraised the paper book.

As far as the argument with regard to exoneration of the insurance company is concerned, I am afraid there is no force and merit in the argument of Mr. Lath, as admittedly the accident had taken place on 27.03.2006 whereas the route permit was valid w.e.f. 13.6.2006 to

12.06.2011. No evidence contrary as to whether the permit was valid on the date of accident or not, has been placed on record.

However, in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Challa Bharathamma and others (2004) 8 SCC 517,*** the insurance company is liable to satisfy the claim at the first instance but will have liberty to recover the same from the insured in accordance with law.

As regards the enhancement of compensation, I will take the income of the deceased as assessed by the Tribunal i.e. ₹40,000/- per annum but will provide 25% increase on the same for future prospects, apply a deduction of 1/3rd and adopt a multiplier of 13 to assess the loss of dependency as ₹4,33,333/-. I will further add to it ₹30,000/- towards loss of consortium and ₹15,000/- each towards loss of estate and funeral expenses.

In all the compensation payable shall be ₹5,03,333/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed equally between the appellants-claimants. The insurance company shall satisfy the amount of compensation at the first instance but it will have right of recovery against the insured-respondent No.2 in accordance with law.

The award passed by the Tribunal is modified to the above extent and the appeal is allowed in above terms.

(AMIT RAWAL)
JUDGE

December 15, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes