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

FAO No.4343 of 2011
Date of Decision.24.11.2017

Bijendri and others ....Appellants

Vs

Mehar Ram and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: None for the appellants.

Mr. Neeraj Khanna, Advocate
for the insurance company.

-.-

AMIT RAWAL J.(ORAL)

The present appeal has been preferred by the legal representatives of the deceased-Rohit against the award passed by the Tribunal on the ground of quantum of compensation as well as contributory negligence. On 30.10.2009, the deceased was going on a motor cycle bearing registration No.HR-51G-7590 from Village Tigaon towards Ballabgarh and when he reached near bus stand of village Tigaon, a motor cycle bearing registration No.HR-29U-5826 driven rashly and negligently by respondent No.1 struck against the aforementioned motor cycle, resulting into death of the deceased. In this regard, an FIR No.96 dated 31.10.2009 under Sections 279 and 304-A IPC was also registered against respondent No.1. The deceased was stated to be working with Indian Oil Corporation Limited and earning ₹6000/- per month.

The Tribunal while assessing the compensation of ₹2,82,200/- took the income of the deceased as ₹3300/- per month, applied a deduction of one half and adopted a multiplier of 14. However, it deducted 50% of the same towards contributory negligence attributed to the deceased as it was a head on collision. Hence, this appeal.

The case set up by the appellants in the grounds of appeal is that the Tribunal grossly erred in holding that the deceased was equally responsible for the accident. It totally misread and misinterpreted the statement of eye witness PW2, Ombir, who stated that the offending motor cycle bearing registration No.HR-29U-5826 driven by respondent No.1 came in a rash, negligent manner, at a very high speed without blowing horn and struck against the motor cycle of the deceased. Moreover, an FIR was also registered against respondent No.1, thus, the finding rendered by the Tribunal on the issue of negligence is liable to be modified.

As regards the quantum of compensation, it was stated that the income taken by the Tribunal as ₹3300/- per month is on lower side when it was specifically pleaded that the deceased was earning ₹6000/- per month. Nothing was provided for future prospects, much less, conventional heads i.e. loss of estate and funeral expenses. Moreover, the multiplier was applied on the basis of the aged of the parents whereas it should have been on the basis of age of the deceased, thus, there is definite scope of enhancement.

On the other hand, learned counsel appearing on behalf of the insurance company submits that the award passed by the Tribunal is perfectly legal and justified. It was a head on collision, therefore, the Tribunal rightly assessed the negligence in the ratio of 50:50 between both the vehicles. It has taken care of all the heads of claim sufficiently, thus, there is no scope for further enhancement.

I have heard learned counsel for the respondent-insurance company and appraised the paper book. The argument of the appellants that the liability to pay the compensation should have been on the insurance company of the offending motor cycle as nothing surfaced that it was a head on collision, is not sustainable, for the cross-examination of eye witness Ombir, PW2, spilled the beans. The cross-examination of PW2 conducted by learned counsel of respondent No.3-insurance company reads as under:-

> "*xxxxmn by Sh. Sanjiv Bansal, counsel for respondent No.3.*
>
> *I know all the petitioners. All the petitioners are residents of other mohalla. I do not know all the children of petitioners. I know only elder son of petitioner. I do not know the names of other sons who are small. I do not know all the children of petitioners except the deceased and his sister Sangam. Rohit was driving the motor cycle. I do not remember the registration number of that motor cycle. No one was along with him. I was coming from my house at about 9.00 p.m. for purchasing vegetables. It was a T point. One road leads from Tigaon to Ballabgarh. One road leads to village Sadpura and third road is also coming from village. Rohit was coming from his house. The deceased was going towards Ballabgarh towards taking turn from the road coming from village side. The alleged offending motor cycle was coming from Ballabgarh side. It was a head on collision. Both vehicles were motor cycles. Both the motor cycles were make splender. The width of road is 18 feet. There is no footpath in between road.*

Other vehicles were also coming and going at that time. I am illiterate. I only read few alphabets of English language. The registration number of motor cycle was in english language. I had memorized the registration number of alleged offending vehicle. Police recorded my statement near Pulia on 30.10.2009. It is incorrect to suggest that no such accident place with alleged offending vehicle. It is incorrect that I was not present at the time of alleged accident. It is incorrect that we have falsely implicated the alleged offending vehicle in collusion with respondents No.1 and 2 as well as police authority for getting false compensation. It is incorrect that contents of affidavit (Ex.PW2/A) is false and fabricated.

RO&AC *sd/-*
sd/- Ombir *MACT/Faridabad*
27.8.2010."

The contents of the cross-examination of PW2 leads to irresistible conclusion that it was a head on collision and both the vehicles were equally negligent, thus, the finding rendered by the Tribunal attributing negligence to both the vehicles in the ratio of 50:50 is upheld.

On the issue of quantum, in the absence of any documentary proof qua the income of the deceased, I will retain the income taken by the Tribunal as ₹3300/- per month. I will provide 40% increase on the same, apply a deduction of one half towards personal expenses and adopt a multiplier of 18 to assess the loss of dependency as ₹4,98,960/-. I will further add to it ₹15,000/- towards loss of estate and ₹15,000/- for funeral expenses.

In all, the compensation payable shall be ₹5,28,960/-. However, in view of upholding the finding of contributory negligence of the deceased to the extent of 50%, the claimants shall be entitled to a sum of ₹2,64,480/-. The amount in excess of what has already been provided by the Tribunal shall also attract interest @6% per annum from the date of filing of the appeal till its realization. The enhanced amount shall be distributed equally between the claimants. The liability shall remain the same as has already been determined by the Tribunal, which has been upheld by this Court.

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

(AMIT RAWAL)
JUDGE

November 24, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No