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

FAO No.7128 of 2010
Date of Decision.08.08.2017

Smt. Rajnish Sehgal and others ....Appellants

Vs

Lakhvinder Singh and others ....Respondents

Present: Mr. Gurmandeep Singh Sullar, Advocate
for the appellants.

Mr. R.K. Bashamboo, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appellants are the legal representatives of deceased-Raj Kumar, who unfortunately died in a motor accident held on 07.12.2006. The deceased was travelling in the maruti car bearing registration No.HR-01R-9325, being driven by one Shiv Kumar. When they reached in the area of village Kishangarh, District Ludhiana, a truck bearing registration No.RJ-31G-2460 going ahead of the aforementioned maruti car applied sudden brakes and the canter bearing registration No.PB-04G-9712 which was following the car hit the car from behind, as a result of which the car got compressed between the two vehicles. Raj Kumar and Shiv Kumar died in the accident and Narveer Sharma received injuries. The deceased-Raj Kumar was stated to be a cloth merchant and earning ₹30,000/- per month. The claimants are widow and two minor daughters. However, the mother of the deceased was also arrayed as 4th claimant before the Tribunal but in this Court, she has been made a pro forma respondent.

The Tribunal while assessing the compensation took the income of the deceased as ₹71,000/- per annum by relying upon the income tax return filed for the assessment year 2005-2006. It made a deduction of 1/4th towards personal expenses and adopted a multiplier of 13 to assess the loss of dependency at ₹6,92,250/-. It also provided ₹10,000/- for funeral expenses and last rites and ₹5000/- towards loss of consortium, thus, in total a compensation of ₹6,92,250/- was assessed, however, since 50% contributory negligence was attributed to the deceased, the amount of compensation was sliced down to ₹3,53,625/- with interest 7.5% from the date of filing of the claim petition till realization. The liability was fixed upon respondent Nos.4 to 6 i.e. driver, owner and insurance company of the canter bearing registration No.PB-04G-9712 jointly and severally.

Mr. G.S. Sullar, learned counsel appearing on behalf of the appellants submits that the Tribunal has committed illegality and perversity in fastening the liability upon the driver of the car bearing registration No.HR-01R-9325 in which the deceased was travelling, particularly, when the FIR was registered against the driver of the truck in which the car was struck and the canter had hit the back side of the car. In fact the car was totally crushed from front and back and therefore, it was negligence of both the drivers of the vehicle and insurance companies of the same are liable to indemnify, thus, the finding of the Tribunal is liable to be set aside.

Per contra, Mr. Bashamboo, learned counsel appearing on behalf of the insurance company of canter involved in the accident submits that the Tribunal has rightly attributed contributory negligence upon the driver of the car, for, the driver of the car should have maintained the distance between the two vehicles so that in case sudden brakes are applied by the driver of the vehicle going ahead, collision could be avoided. But in this case, the driver of the car was rash and negligent in not maintaining the distance between two vehicles and driving the vehicle at a high speed. The finding of the Tribunal is perfectly legal and justified, moreover, there is no scope for further enhancement.

I have heard learned counsel for the parties, appraised the paper book and afraid that the argument of Mr. Sullar is not able to cut ice. A person travelling in car other than the owner is a third party and can always implead the driver, owner and insurance company of the car in which he was traveling. The only exception is that he himself should not be the owner or taken the car on hire. In the absence of aforesaid two ingredients, he would be a third party. The facts aforementioned reveal that the car had hit the back side of the truck, resulting into the canter hitting the car from back side. Had the driver of the car kept the appropriate distance, even by applying the sudden brakes, accident could have been avoided.

In view of the observations made above and the fact that the claimants did not implead the owner, driver and insurance company o the car in which the deceased was travelling, the finding of the Tribunal on the issue of liability does not call for any interference and hereby upheld.

As regards the assessment of compensation, the Tribunal has rightly taken the income of the deceased as ₹71,000/- per annum, made a deduction of 1/4th and adopted a multiplier of 13, however, erred in providing ₹5,000/- only for loss of consortium to the wife, ₹10,000/- for funeral expenses and nothing provided for loss of love and affection to the children and mother and loss of estate, thus, under these heads enhancement is required to be made.

Accordingly, I will provide ₹1 lac for loss of consortium to the wife, ₹1 lac each to both children and ₹50,000/- to the mother for loss of love and affection, ₹25,000/- for funeral expenses and ₹10,000/- for loss of estate. In total, the amount of compensation shall be ₹10,77,250/- but the claimants shall be entitled to ₹5,38,625/- keeping in view the fact that 50% contributory negligence has been attributed to the driver of the car, thus, the amount of compensation is required to be sliced down to half of what has been assessed. The amount over and above of what has already been assessed by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed amongst the claimants in the ratio of 2:2:2:1. The liability shall remain the same as has been assessed by the Tribunal.

The award of the Tribunal qua quantum of compensation is modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

August 08, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No