In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 28.8.2017

FAO No. 4719 of 2012

Shriram General Insurance Company Limited

---Appellant

versus

Paramjit Kaur and others

---Respondents

FAO No. 4072 of 2012

Paramjit Kaur and others

---Appellants

versus

Mohinder Lal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Gupta, Advocate
for the Insurance Company

Ms.Priya Deep, Advocate,
for Mr. Ashwani Talwar, Advocate
for the appellant in 4719 of 2012

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Rekha Mittal, J.

This order will dispose of FAO No. 4072 of 2012 and 4719 of 2012 as these have emerged out of the same award dated 11.4.2012 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short “the Tribunal”) whereby compensation has been awarded in regard to death of Harjap Singh in a motor vehicular accident that took place on 28.2.2011.

The Tribunal has assessed income of the deceased at Rs.

21,000/- per month, deducted 1/3rd for personal expenses and applied a multiplier of 8 to compute loss of dependency to the tune of Rs. 13,44,000/-. In addition, an amount of Rs. 36,000/- on account of expenses on funeral and Rs. 20,000/- for loss of consortium has been awarded making total compensation to Rs. 14,00,000/-, payable with interest at the rate of 9% per annum from the date of petition till realization, to be shared by the claimants, detailed in para 12 of the award.

FAO- 4719 of 2012

Counsel representing the insurance company has assailed findings of the Tribunal on issue No. 1 with the submission that the first information report was lodged at the instance of one Kirpal Singh on the next date of the occurrence against an unknown vehicle and driver and after 18 days of the occurrence, Avtar Singh PW4 recorded a statement nominating driver of the offending vehicle, sufficient to prove that the alleged offending vehicle was planted in order to support cause of the claimants.

Another submission made by counsel is that the Tribunal while adverting to issue No. 1 did not take into consideration testimony of Varinder Singh, driver RW-1 and Mohinder Lal, RW-2 owner of the offending vehicle, therefore, findings recorded by the Tribunal on issue No. 1 cannot be allowed to sustain and liable to be set aside.

Counsel representing the claimants/respondents, on the contrary, has supported findings of the Tribunal on issue No. 1 with the submission that Avtar Singh PW-4 has proved the accident and established identity of the offending vehicle as well as of driver. He has explained the circumstances under which he could not record his statement with the police prior to 18.3.2011. Further argued that neither the driver nor owner of the vehicle made any representation to any authority with regard to initiation of criminal proceedings against Varinder Singh who faced trial for causing accident resulting in death of Harjap Singh.

Avtar Singh, one of the eye witnesses to the occurrence appeared in the witness box and tendered into evidence his affidavit Ex. PW-4/A wherein he has given a detailed account of the occurrence in question having been caused due to rash and negligent driving of Tata Ace bearing No. PB-12M-9315 driven by Varinder Singh. Avtar Singh has deposed that one hour before the occurrence, he had taken lift in the offending vehicle for going to his village and after the accident, Varinder Singh dropped him at his village. The witness was cross examined at length by counsel representing the respondents therein but nothing material and tangible has been brought forth to discard or disbelieve his testimony. Varinder Singh has not alleged any ill will or enmity against him by Avtar Singh to get him falsely indicted in the crime. There is nothing on record suggestive of the fact that Avtar Singh had any interest in the claimants to depose against driver of the offending vehicle. This apart, it is undisputed position of the case that Varinder Singh was arrested in connection with the accident and the offending vehicle was taken into possession which was later released on sapurdari. Criminal case regarding the accident was stated to be pending against Varinder Singh. Statement of Varinder Singh is conspicuously silent if Avtar Singh PW-4 had not taken lift from him on the date of occurrence. Under the circumstances, it is difficult to accept contention of the company that the Tribunal has committed an error much less illegality by upholding plea of the claimants in regard to accident being the result of rash and negligent driving of Tata Ace bearing No. PB-12M-9315 by Varinder Singh, its driver. Findings of the Tribunal on issue No. 1 are liable to be affirmed and ordered accordingly.

In view of the above, appeal filed by the insurance company is not meritorious and ordered to be dismissed.

FAO-4072 of 2012

The deceased was an employee of National Fertilizer Limited, Nangal, Gurmail Singh, Personal Officer from the National Fertilizer Limited PW1 has deposed that Harjap Singh was working as Senior Cook in National Fertilizer Limited at a gross salary of Rs. 32,191/-. He produced appointment letter Ex. P.1 and salary slip Ex. P.2. The Tribunal has assessed compensation by taking into consideration net pay of the deceased at Rs. 21,000/- per month. Perusal of salary slip Ex. P.2 would reveal that gross salary of the deceased was Rs.30560.46/- out of which an amount of Rs. 6576/- was deducted, detailed therein. No other deduction except income tax can be taken into consideration for the purpose of assessing income of the deceased. Under the circumstances, income of the deceased is assessed at Rs. 30,560./- per month. As the deceased was more than 50 years of age, claimants are not entitled to increase in income for future prospects. Salary of the deceased was taxable. By taking into consideration the provisions of the Income Tax Act, deduction to the tune of Rs. 21.292/- (annual) towards income tax is permissible.

The Tribunal has deducted 1/3rd for personal expenses of deceased and applied a multiplier of 8. The application for compensation was filed by the widow, two children and mother of the deceased, held to be entitled to get compensation. As such, admissible deduction would be 1/4th.

The deceased was 51 years old and in the light of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**, admissible multiplier is 11. Accordingly compensation for loss of dependency comes to Rs.3,45,428 x 11 = 37,99,708 – 9,49,927 ($1/4^{th}$)= Rs. 28,49,781/-.

Under conventional heads, the claimants shall be entitled to the following compensation:-

1. Loss of consortium	Rs. 1,00,000/-
2. Loss of love and affection to the children	Rs. 1.5 Lakhs (to be to shared equally
3. Loss of love and affection to the mother	Rs. 50,000/-
4. Expenses on funeral and last rites	Rs. 25,000/-
5. Loss of estate	Rs. 25,000/-

Total compensation is Rs.31,99,781/- and the additional amount is Rs.17,99,781/- (31,99,781 – 14,00,000). The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable exclusively to widow of the deceased except compensation awarded to the other claimants for loss of love and affection. The share of widow shall be deposited in fixed deposit receipt for a period of three years. The claimants shall not be entitled to raise loan against the FDR.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.8.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No