IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: August 22, 2017

FAO No. 5840 of 2012 (O&M)

Reliance General Insurance Co. Ltd. *..Appellant*

Versus

Suman Lata and others *..Respondents*

FAO No. 318 of 2014 (O&M)

Suman Lata and others *..Appellants*

Versus

Jai Narain and others *..Respondents*

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate
for the insurance company

Mr. Arun Singal, Advocate
for the claimants

Mr. Rajesh Dhankhar, Advocate
for the driver and owner/respondent no.1 & 2
FAO-318-2014

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REKHA MITTAL, J. (Oral)

CM 1026-CII of 2014 in FAO No. 318 of 2014

Prayer in this application is for condoning delay of 385 days in filing the appeal.

In view of averments made in the application supported by an affidavit of one of the appellants namely Smt. Suman Lata and arguments advanced by counsel for the parties, the application is allowed and delay of 385 days in filing the appeal stands condoned, subject to condition that in case the appellants succeed in appeal, they will forgo interest for the period of delay.

MAIN CASES:

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 19.07.2012 passed by the Motor Accidents Claims Tribunal, Panipat (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded in regard to death of Rakesh Kumar in a motor vehicular accident that took place on 16.05.2010.

FAO-5840-2012

The sole submission made by counsel for the appellant/insurance company is to assail findings of the Tribunal on issue no. 1 whereby rashness and negligence in causing accident has been attributed to Jeep bearing registration no. HR 37-B-2108, driven by Jai Narain. To substantiate his contention, counsel has manifold submissions to make. It is argued that as per plea of the claimants, Naresh Kumar Sharma, brother of the deceased was an eye-witness to the occurrence being occupant of car Maruti Alto bearing registration No. HR-06-G-1508 driven by Rakesh Kumar (Since deceased) but first information report at the instance of Naresh Kumar was lodged on 17th May 2010, sufficient to prove that Naresh Kumar was not present at the spot. Further argued that even in the FIR lodged after one month of the accident, neither registration particulars of the offending vehicle nor of driver of vehicle have been given meaning thereby a hit and run case has been converted into a case of accident caused by an identifiable vehicle. It is further argued that the Tribunal has committed a serious error rather illegality while relying upon testimonies of alleged eye witnesses Naresh Kumar Sharma (PW2), Balbir (PW3) and ASI Dilbag Singh (PW6) to uphold plea of claimants that the accident was caused due to rash and negligent driving of Jeep HR 37-B-2108 by Jai Narain.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal with the submission that on a detailed consideration of the matter in right perspective, the Tribunal has rightly placed reliance upon testimonies of eyewitnesses when otherwise the factum of accident has been admitted by the driver and owner of the offending vehicle by suggesting to Naresh Kumar that accident was caused due to rash and negligent driving of offending vehicle by its driver. Further argued that driver of offending vehicle namely Jai Narain did not appear in the witness box to counter testimonies of eyewitnesses nor Jai Narain lodged any protest against his being challaned by the police after due investigation of the FIR lodged at the behest of Naresh Kumar. Naresh Kumar has duly explained in his cross-examination as to how he could connect the vehicle in question with the occurrence as he was in a position to identify driver of the offending vehicle having seen him at the place of occurrence.

I have heard counsel for the parties, perused the paper book particularly findings of the Tribunal on issue no.1.

I have gone through testimonies of Naresh Kumar Sharma (PW2) Balbir son of Hari Kishan (PW3) and ASI Dilbag Singh (PW6), copies whereof were supplied by counsel for the insurance company during course of hearing, in the light of observations recorded by the Tribunal. No doubt, the FIR in the case was registered after about one month of the occurrence and in the FIR, there is no reference to the registration particulars of offending Jeep but make of Jeep has been mentioned therein. Naresh Kumar was cross examined at length by counsel representing the insurance company before the Tribunal but nothing tangible and material has been brought forth to shatter evidential value of his testimony or to prove that he was not an eye-witness to the occurrence. There is nothing on record suggestive of the fact that driver and owner of the vehicle were known to the claimants prior to the occurrence or they otherwise were interested in success of the petition filed by the claimants seeking compensation. It is undisputed position of the case that on the basis of the FIR lodged by Naresh Kumar Sharma, the police conducted investigation and on completion thereof, challan was presented in the Court and Jai Narain faced proceedings for causing accident. Under the circumstances, I do not find any error much less illegality in findings of the Tribunal accepting plea of the claimants that accident was caused due to rash and negligent driving of Jeep bearing No. HR-37-B-2108 driven by Jai Narain at the relevant time. That being so, appeal filed by the insurance company is devoid of merit and liable to be rejected.

Ordered accordingly.

FAO-318-2014

The Tribunal had assessed income of the deceased at Rs.4,500.00 per month, deducted 1/3rd towards personal expenses and applied a multiplier of 17 to compute loss of dependency at Rs.6,12,000.00. In addition, an amount of Rs.5,000.00 for loss of estate, Rs.5,000.00 for transportation of dead body and funeral/last rites expenses and another Rs.10,000.00 for loss of consortium to widow has been awarded, making total compensation to the tune of Rs.6,32,000.00.

Counsel for the claimants would urge that the deceased left behind widow, two minor children and parents, held to be dependents upon his earnings, therefore, admissible deduction would be 1/4th. The Tribunal has not extended benefit of increase in income for future prospects to the extent of 50%. Compensation under conventional needs re-look and enhancement.

Counsel representing the insurance company has supported the award with the submission that adequate compensation has been awarded in favour of the claimants.

Indisputably, in the application for compensation filed by the widow, two minor children and parents of deceased Rakesh Kumar Sharma, claimants have been held to be dependent upon earning of the deceased. In the light of enunciation laid down in ***Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77,*** deduction would be 1/4th and admissible multiplier would be 18 in place of 17 as the deceased was held to be 23 years old.

The Tribunal has not allowed benefit of increase in income for future prospects to the extent of 50% as per law laid down in judgment of Hon'ble the Supreme Court ***Rajesh and others vs Rajbir Singh and others 2013(3) RCR (Civil) 170.*** The deceased was a young person aged 23 years old. The Tribunal has assessed his income as Rs.4,500/- per month. He left behind family consisting of his widow, two children and parents. There is nothing on record suggestive of the fact that had the deceased remained alive, he would have stagnated at income of Rs.4,500/- per month. The mere fact that a reference is pending consideration before a larger Bench of

Hon'ble the 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 future prospects till the judgment in *Rajesh's* case (supra) is varied or set aside. After extending benefit of increase in income for future prospects to the extent of 50%, loss of dependency comes to **Rs.10,93,500.00** (4,500 x 12 x 18 (9,72,000) + 4,86,000 (50% F.P) minus 3,64,500 (1/4$^{\text{th deductions)}}$).

Under conventional heads, an amount of Rs.1,00,000.00 for loss of consortium to widow, Rs.25,000/- for expenses on funeral/last rites, Rs.25,000/- for loss of estate is awarded. The children of the deceased is entitled to Rs.1,50,000.00 (to be shared equally) and Rs.50,000/- for mother of the deceased on account of loss of love and affection. In this manner, total compensation comes to **Rs.14,43,500.00** (10,93,500 + 1,00,000 + 25,000 + 25,000 + 1,50,000 + 50,000) and additional amount is **Rs.8,11,500.00,** which shall carry interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay in filing the appeal. The additional amount shall be payable to widow and children of the deceased except an amount of Rs.50,000.00 for loss of love and affection payable to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
JUDGE

August 22, 2017
mohan bimbra

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