IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-10180-2014 (O&M)
Date of Decision: 10.11.2017

RENU AND ORS.

...Appellants

V/S

PARAMJIT SINGH AND ORS **..Respondents**

CORAM: HON'BLE MR. RAJBIR SEHRAWAT

Present:- Mr. Sagar Aggarwal, Advocate,
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.3.

RAJBIR SEHRAWAT, J. (Oral):

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This appeal has been filed by the claimants challenging the award passed by Motor Accident Claims, Tribunal, Karnal (hereinafter referred to as 'Tribunal'), on the ground that the compensation awarded to them is insufficient.

The brief facts of the case as per the claimants are that on 07.08.2012, Vimal Kumar alongwith Bakshish Singh were going from Gurgaon to Lalru on a truck. The said truck was being driven by Bakshish Singh at moderate speed. At about 02:00 AM on 08.08.2012, when they reached on National Highway No.1, near village Samana Bahu, the offending truck bearing Registration No.HP-12D-2967, which was ahead of their truck and was being driven in a rash, negligent and careless manner applied sudden brakes, as a result of which vehicle of Bakshish Singh strcuk against the offending vehicle and in the said accident, Vimal Kumar sustained multiple injuries all over his body. Ultimately, he succumbed to the injuries suffered by him in the accident. In this matter, an FIR was also got registered against respondent No.1, the driver of the offending vehicle. Therefore, the claim petition was filed. It was claimed in the petition that the deceased was working as a cleaner and was getting a salary of ₹ 8,000/- per month. The age of the deceased was stated to be 50 years . It was further pleaded that the claimants have spent an amount of ₹ 50,000/-on the treatment of the deceased.

On notice, the respondents appeared. Respondents No. 1 and 2 filed their joint written statement. Besides taking the preliminary objections, the respondents claimed that the accident has never taken place with their vehicle. It was further pleaded that the accident had not taken place due to any fault of respondent No.1. It was also pleaded that even if such an accident had taken place as claimed by the claimants, then the vehicle was duly insured and liability of payment of the compensation would be on the insurance company.

Respondent No.3-insurance company filed a separate written statement. Besides taking preliminary objections, insurance company claimed that no such accident had taken place. It was also claimed that false and concocted story has been put forth by the claimants to grab the compensation from the answering respondents. It was further claimed that the driver of the offending vehicle was not holding a driving licence on the date of alleged accident. Therefore, it was claimed that the insurance company is not liable to pay any compensation.

Evidence was led by the parties in support of their respective pleadings.

After hearing the parties and appreciating the evidence, Tribunal held that the accident had taken place due to rash and negligent driving of the offending vehicle. So far as the quantum of compensation is concerned, the

Tribunal held that the son of deceased, Jatinder Kumar (PW-1) and Bakshish Singh (PW-2) have specifically deposed that the deceased was working as a cleaner/conductor of the truck. They have also stated that the deceased was earning a sum of ₹ 8,000/- per month as salary, however, no evidence has been led on this point. Therefore, the Tribunal assessed the notional income of the deceased to be ₹ 5800/- per month, equal to daily wager. The age of the deceased was taken as 52 years as per postmortem report Ex.P-4. After deducting 1/4th income towards personal expenses, the monthly dependency of the claimants was assessed to be ₹ 4350/- per month. Multiplier of 11 was applied by the Tribunal as per the judgment of Hon'ble Supreme Court in **Smt. Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) R.C.R. (Civil) 77 (SC)**. Accordingly, a total sum of ₹ 5,72,000/- was assessed on account of loss of dependency. Besides this, an amount of ₹ 25,000/- was granted on account of loss of love and affection and another amount of ₹ 10,000/- was awarded for funeral expenses. Thus the claimants were held entitled to total compensation of ₹ 6,07,000/-, to be paid jointly and severally by all respondents and hence, the claim petition was allowed. The Insurance Company was held liable to pay the compensation as the driver of the offending vehicle was held having valid and effective driving licence on the date of accident.

Learned counsel for the appellants has submitted that it has come on record that the deceased was working as a cleaner on the truck. Therefore, his salary has to be taken higher than that of daily wager. Further, it is claimed by the appellants that the funeral expenses, as have been granted, are on the lower side. Still further, learned counsel for the appellants submits that as per the judgment of Hon'ble Supreme Court rendered in **National Insurance Cr. Ltd. vs. Pranay**

Sethi decided on 31.10.2017 the claimants are entitled to the enhancement of compensation on account of future prospects to the extent of 10% of the income.

On the other hand, learned counsel for respondent No.3-insurance company has opposed the arguments made by the counsel for the appellants. The counsel submits that the income of the deceased has rightly been assessed, taking him to be a daily wager, since there is no iota of evidence on the file to prove the income. His further submission is that even on account of funeral expenses, compensation has been granted.

Heard the learned counsel for the parties.

This is the considred opinion of this Court that the arguments of the counsel for the appellants deserve to be sustained. The fact of employment of the deceased has duly come on record in the deposition of his co-employee as well as his son. Although, no evidence has been led qua the exact amount of the salary being received by him, yet, it can safely be presumed that he must have been earning more than a mere daily wager. Hence, in the facts and circumstances of the case, the income of the deceased is assessed to be ₹ 6,000/- per month. After giving the benefit of 10% of the income on account of future prospects as per the judgment of Hon'ble Supreme Court in **National Insurance Co. Limited's Case (supra)** , the income of the deceased would come to ₹ 6600/- per month. After applying deduction of 1/4th of income towards personal expenses, the dependency comes to ₹ 4950/- per month. The multiplier of 11 has rightly been applied by the Tribunal. Therefore, the total compensation on account of loss of dependency comes to (4950x12x11)= ₹ 6,53,400/-.

Besides this, funeral expenses granted to the claimants are enhanced to ₹ 15,000/- as per the judgment of the Hon'ble Supreme Court in **National**

<u>Insurance Co. Limited's Case (supra)</u> . Besides this, the claimants/appellants are also entitled to an amount of ₹ 15,000/- as loss of estate. However, learned counsel for respondent No.3-insurance company submits that as per the abovesaid judgment of the Hon'ble Supreme Court, compensation cannot be granted on account of loss of love and affection in the present case. This submission of learned counsel for respondent No.3-insurance company appears to be justified in terms of the judgment of the Hon'ble Supreme Court. This amount is declined to the appellants.

Resultantly, the claimants/appellants are granted a total compensation of ₹ 6,83,400/- as per the details given below:-

Loss of dependency:-	₹ 6,53,400/-
Loss of estate:-	₹ 15,000/-
Funeral expenses:-	₹ 15,000/-
Total	**₹ 6,83,400/-**

The claimants shall be entitled to the interest as awarded by the Tribunal.

In view of the above, the present appeal is accepted and the award passed by the Tribunal stands modified in above terms.

(RAJBIR SEHRAWAT)
JUDGE

10.11.2017
Nisha

Whether speaking/reasoned: **Yes**

Whether Reportable: **No**