IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4898 of 2013 (O&M)
Decided on: 17.11.2017

Krishna and Anr. **.....Appellants**

versus

Uma Shankar and Ors. **.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. C.R. Dahiya, Advocate and
Mr. Anand Singh Singh, Advocate
for the appellants.

Mr. Gaurav Grover, Advocate
for respondents No.1 and 2.

Mr. Satpal Dhamija, Advocate
for respondent No.3.

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RAJBIR SEHRAWAT, JUDGE (ORAL)

This is an appeal filed by the claimants who are the parents of the deceased-Anil, who lost his life in motor-vehicle accident. The appellants have challenged the award passed by Motor Accident Claims Tribunal, Fatehabad (Hry.) on the ground of insufficiency of the compensation awarded.

The facts, as claimed by the claimants, are that on 28.02.2011, at about 7.00 A.M., their son Anil along with Rinku left for Bhuna on motorcycle bearing registration No.HR-20E/5172. When they reached at main road, in the area of bus stand Dhani Gopal, then an oil Tanker bearing registration No. UP-85M/9810, which was being driven in a rash and negligent manner by respondent No.1-Uma Shanker, came from the side of Uklana and struck against the motorcycle. Due to the impact, Rinku fell down on the side of the road and Anil was ran over by the Tanker. The son of the appellants, namely, Anil succumbed to the injuries at the spot. It was further claimed, that in relation to this accident, an FIR was also lodged at Police Station, Bhuna, Tehsil and District Fatehabad. Therefore, the claim petition was filed. In the claim petition, it was claimed by the claimants that the deceased was a student of matriculation and he used to earn Rs.3000/- per month, by assisting his father, in the agriculture and business of dairy farming. The age of the deceased was claimed to be 16 years. Therefore, the petitioner filed petition claiming Rs.10,00,000/- as a compensation.

On notice, respondents No.1 and 2 filed joint written statement. In the written statement, the negligence on the part of the driver of the offending vehicle was denied. It was further pleaded that the deceased received injuries in some other accident. However, on humanitarian ground, the driver of the alleged offending vehicle stopped his vehicle while passing from that side; and lifted the deceased from the road for taking to hospital. But after some time the people gathered at the spot and alleged that the accident took place with the offending vehicle of respondent and lodged the case against him. However, it was pleaded that the offending vehicle was insured with respondent No.3 at the time of alleged occurrence. The pleadings regarding income of the deceased were also denied. Respondent No.3 filed separate written statement and denied the involvement of the offending vehicle and also the negligence of respondent No.1. Although, the Insurance Company admitted the insurance of the offending vehicle, however, denied the liability on the ground that the driver had violated the terms and conditions of the policy of Insurance.

Parties led their respective evidence.

After hearing the parties, the Tribunal held the offending vehicle to be negligent and awarded an amount of Rs.5,45,000/- in total, in equal share, to the claimants along with 9% interest. The notional income of the deceased was taken by the Tribunal to be Rs.30,000/- per annum, inclusive of the future increase. Multiplier of 18 was applied in this case. Hence, the amount of Rs.5,40,000/- was calculated as loss of dependency. Besides, this a sum of Rs.5,000/- was allowed to the claimants as compensation for expenses of last rites.

Aggrieved against this award the claimants have filed the present appeal.

While arguing the case, counsel for the appellants has submitted that the income of the deceased has been wrongly assessed by the Tribunal on lower side. Further, he has submitted that no compensation has been granted on account of loss of love and affection and for loss of estate. Still further, it is argued by the counsel that the last rites expenses granted by the Tribunal are grossly inadequate.

On the other hand, learned counsel for the respondent-Insurance Company submits that the income of the deceased has rightly been taken by the Tribunal to be Rs.30,000/- per annum. It is his submission that even the claimed income of the deceased was Rs.3000/- per month. However, to prove this, no evidence has been led on record by the claimants. Hence, there is nothing wrong with the conclusion of the Tribunal qua the assessment of the notional income of the deceased.

Having heard, the learned counsel for the parties, this Court is of the considered opinion that so far as the income is concerned, that has rightly been taken by the Tribunal at Rs.30,000/- per annum. The submission of the learned counsel for the respondents is worth acceptance in this regard. Even the claim of the claimants is that deceased was earning only Rs.3,000/- per month, but even to prove that, no evidence has been led by the claimants. Hence, the finding of the Tribunal regarding the notional income of the deceased is upheld.

However, the submission of the learned counsel for the appellants that nothing has been granted to the claimants on account of loss of estate and the compensation awarded on account of last rites is inadequate; is worth acceptance. As per the judgment of Hon'ble the Supreme Court rendered in ***SLP No.25590 of 2014*** titled as N***ational Income Company Ltd. Vs. Pranay Sethi and Ors***., it has been held that the claimants would be entitled to an amount of Rs.15,000/- on account of loss of estate and Rs.15,000/- would be the appropriate compensation for the expenses incurred on last rites of the deceased. Accordingly, the appellants are granted an amount of Rs.15,000/- on account of loss of estate and the amount granted on account of expenses incurred on last rites is enhanced to Rs.15,000/-

Hence, the net increase of Rs.25,000/- is granted to the claimants, by partly accepting the appeal filed by them. The interest on the awarded amount would remain at the same rate, as was granted by the Tribunal.

In view of the above, the present appeal is partly allowed and the award passed by the Tribunal is modified; only to the extent mentioned above.

17th November, 2017 **[RAJBIR SEHRAWAT]**
Manju **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No