125.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-847-2017 (O&M)
Date of decision:07.02.2017

NATIONAL INSURANCE COMPANY LTD .... Appellant

versus

SANGEETA THAKUR AND OTHERS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Inderjit Sharma, Advocate, for the appellant.

HARI PAL VERMA, J.

The appellant-Insurance Company has filed the present appeal against the award dated 18.11.2016 passed by Motor Accident Claims Tribunal, S.A.S. Nagar (Mohali), whereby the claim petition filed by respondents No.1 to 4/claimants under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Sanjay Thakur, was allowed and a compensation to the tune of ₹18,04,500/- was granted along with interest @ 6% per annum from the date of filing the petition till realization of the compensation amount.

Briefly stated, on 09.02.2016, the deceased was coming from F-Eleven Restaurant, Phase-11, Mohali after completion of his work and was going to his house on bicycle, and when he reached near red light of Phase-11, Mohali, the offending vehicle i.e. a car bearing registration No.HR-04-0697 came from back side at a very high speed, being driven in a rash and negligent manner, struck in the bicycle of the deceased from back. Due to the collision, the deceased received injuries on his head, arm and leg and was taken to the Civil Hospital, Phase-6, Mohali, where the doctor declared him brought dead. The driver of the offending vehicle fled away from the spot along with his car. It was contended by the claimants that the accident took place due to rash and negligent driving of car bearing registration No.HR-04-0697 which was being driven by Manish Kumar (respondent No.5 herein). The claimants pleaded that the deceased was earning ₹15,000/- per month by working as Head Cook in F-Eleven Restaurant, Phase-11, Mohali and the Tribunal, under various heads, granted compensation to the tune of ₹18,04,500/-

Learned counsel for the appellant-Insurance Company, while impugning the aforesaid award, has argued that the learned Tribunal has wrongly held that the accident took place due to rash and negligent driving of Manish Kumar (respondent No.5 herein). The Tribunal has not taken into consideration the fact that the FIR has been registered on the statement of Raghubir Singh-CW2 and in the FIR neither the vehicle number nor the name of the driver has been mentioned. So, there is no evidence to implicate the driver of the offending vehicle. He further argued that the father, being class-II legal heir, was not entitled to any compensation in the eyes of law. He has further stated that although there is no evidence in respect of employment of the deceased, yet the Tribunal has erred in assessing the income of the deceased as ₹9,000/- per month which is on higher side. Similarly, the deduction of personal expenses as 1/4th has wrongly been taken, whereas it should have been 1/3rd since the father is not entitled to compensation as per the law laid down by the Hon'ble Supreme Court in ***<u>Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121</u>***.

I have heard learned counsel for the appellant.

There is no dispute that the deceased-Sanjay Thakur was aged about 40 years and was working as Head Cook in F-Eleven Restaurant, Phase-11, Mohali. PW4-Rupinder Pal Singh, owner of F-Eleven Restaurant, Phase-11, Mohali, has stated that the deceased was working in his restaurant as Chinese Chef since January, 2013 to February, 2016. He had initially joined his restaurant at the salary of ₹11,000/- per month but subsequently with the passage of time, his salary was increased and presently, his salary was ₹15,000/-. The salary certificate Ex.CW4/A is already on record. The plea that the said document Ex.CW4/A is a hand-written document and, therefore, cannot be taken into consideration, cannot be accepted. There is no illegality in the award passed by the Tribunal whereby his earning has been presumed as ₹9,000/- per month. Since the deceased was a skilled person and was aged about 40 years, future prospects @ 30% has rightly been applied. In this manner, the income has rightly been assessed as ₹1,40,400/- per annum and the Tribunal has applied deduction on account of personal and living expenses at 1/4th. Thus, after deduction, the dependency comes to ₹1,05,300/- per annum. Considering the age of the deceased, the Tribunal has rightly applied the multiplier as 15 in the case.

Accordingly, this Court does not find any cause for interference in the present appeal and the same is dismissed.

(HARI PAL VERMA)
JUDGE

07.02.2017
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No