IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 27.04.2018

(i) FAO No. 3350 of 2002

Krishna Devi and others

.......Appellants

Versus

Ram Pat and others

......Respondents

(i) FAO No. 3262 of 2002

United India Insurance Company

.......Appellant

Versus

Smt. Krishna Devi and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjeev Gupta, Advocate
for the appellants in FAO No. 3350 of 2002 and
for respondents No. 1 to 5 in FAO No. 3262 of 2002.

Mr. Vinod Chaudhary, Advocate
for respondent No.4 in FAO No. 3350 of 2002 and
for appellant in FAO No. 3262 of 2002.

AVNEESH JHINGAN, J.(oral)

The present two appeals have been filed against the award dated 01.3.2002 passed by Motor Accident Claims Tribunal, Sirsa (for short 'the Tribunal').

An accident took place on 19.05.1999, it proved fatal for Jai Parkash aged 37 years. He along with Hari Singh and Rajbir were going from Pilani to Hissar in a Uno Car. 2-3 kms ahead of Siwani a Truck bearing registration No. AR-06-0177 (for short 'the offending vehicle') dashed into the car, as a result Jai Parkash suffered injuries, he was shifted to CMC Hissar. He was declared dead in the hospital. FIR No. 63 dated 19.5.1999 was registered at Police Station Siwani. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, two minor children and parents of the deceased.

In the claim petition it was pleaded that the deceased was a contractor of Poppy Husk and duly registered with Excise Department, Rajasthan. His income was claimed to be Rs.10,000/- per month. The Tribunal held that accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was taken as 37 years. Since, the claimants failed to prove the income of the deceased, the Tribunal assessed the same as Rs.4000/- per month. The Tribunal awarded a sum of Rs.5,12,000/- along with interest at the rate of 9% per annum.

The insurer of the offending vehicle is in appeal and the claimants have also filed appeal for enhancement of compensation.

Learned counsel for the Insurance Company argued that the accident occurred on GT road and it was a head-on collision, therefore, it was a case of contributory negligence. He relied upon decision of this Court in ***Lachhmi and others Versus Ranjit Singh,*** 1995(2) The Punjab Law Report 309 and ***Miss Ballu Gaur and others Versus Mrs. R.P. Randhawa and others*** 1985(2) The Punjab Law Reporter 135.

The contention raised by learned counsel is not well founded. The onus to prove rash and negligent driving of the offending vehicle was on the claimants. They successfully discharged the onus by deposition of PW2 Rajbir Singh. In his examination-in-chief, he stated that the car was going on left side of the road and the truck came on the wrong side and struck against the car. The said evidence was not rebutted. It is important to note that the driver of the offending vehicle did not even step into the witness box to state that there was negligence of the driver of the Uno Car. Apart from this, even in police investigation it was found that the driver of the offending truck was responsible for causing the accident. Merely because there is a head-on collision this in itself will not prove contributory negligence. As per facts stated by Rajbir Singh the car was going on the left side of the road and the truck came from the wrong side, therefore, there was head-on collision. In that case no negligence can be attributed to the driver of the car. The authorities relied upon by learned counsel will be of no help in the facts of the present case. It cannot be held that in every case where there is head on collision, it is case of contributory negligence, it has to be determined in the facts of each case.

Learned counsel for the Insurance Company contended that the Tribunal erred in assessing earning of deceased as Rs.4000/- as the minimum wages prevalent in State of Haryana in the year 1999 was much less i.e. approximately Rs.1800/- for unskilled labourer.

The contention raised is rejected. The deceased was not an unemployed person having no source of income. He was Contractor of Poppy husk. His registration certificate as Contractor of Poppy husk issued by Excise Department, Rajasthan, was exhibited as Ex.P1. A solvency certificate was produced before the Tribunal stating that he had a solvency of Rs.8 lac, he was owner of the property, in such circumstance, it would not be appropriate to restrict the earning of the deceased merely on minimum wages. No doubt, the earning of the deceased was not proved yet assessment of income of the deceased by the Tribunal less than the taxable limit for the said assessment year but more than minimum wages cannot be faulted.

Learned counsel for the Insurance Company contended that the age of the deceased was taken as 37 and multiplier of 16 has wrongly been applied.

Learned counsel for the claimants could not seriously dispute the argument as in accordance with Supreme Court decision in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another***, 2009(6) SCC 121, where the deceased is 37 years of age, multiplier of 15 is to be applied.

The contentions raised by learned counsel for the claimants are that no future prospects have been added and 1/3rd deduction for self expenses has wrongly been made as deceased was survived by more than four dependents. Learned counsel further contended that no amount has been awarded under conventional heads.

The contentions raised by learned counsel for the claimants deserve acceptance. Supreme Court in **Sarla Verma's case (Supra)** has held that where the deceased is survived by 4 to 6 dependents, 1/4th deduction is to be made for self expenses.

In consonance with the decision of Surpeme Court in ***National Insurance Company Limited Versus Pranay Sethi and others***, 2017 AIR (SC) 5157 and ***Hem Raj Versus Oriental Insurance Company Ltd. 2017 DNJ 1102,*** 40% future prospects are to be added. Further the claimants are also entitled to Rs.70,000/- under conventional heads.

The Compensation is recalculated as under:

Annual earning	Rs.48,000/-
40% future prospects	Rs.19,200/-
	Rs.67,200/-
¼ deduction	Rs.16,800/-
	Rs.50,400/-
Multiplier of 15 (50,400 x 15)	Rs.7,56,000/-
Conventional heads	Rs.70,000/-
Total	Rs.8,26,000/-

The award dated 01.03.2002 is modified to the extent that the amount awarded of Rs.5,12,000/- is enhanced to Rs.8,26,000/-.

The claimants would be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

Accordingly, the appeals are disposed of.

(AVNEESH JHINGAN)
JUDGE

27.04.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No