IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

Date of decision: 16.11.2018

FAO 1539 of 2011

Kavita Mandal and others ....*Appellants*

versus

Bijender and others ......*Respondents*

FAO 3004 of 2011

ICICI Lombard Motor Insurance Company ....*Appellant*

versus

Kavita Mandal and others ....*Respondents*

CR 7240 of 2011

Kavita Mandal and others ....*Petitioners*

versus

Bijender and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : None for the claimants

Ms Vandana Malhotra, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals and civil revision as these have emerged out of the same award dated 30.10.2010 passed by the Motor Accidents Claims Tribunal, Panipat whereby compensation has been assessed on account of death of Naresh Mandal in a motor vehicular accident that took place on 25.05.2009.

FAO No.1539 of 2011 has been filed by the claimants seeking enhancement of compensation whereas FAO No. 3004 of 2011 has been filed by the insurance Company to assail the award. CR No. 7240 of 2011 has been filed by the petitioner Kavita Mandal to express her grievance against order dated 10.09.2011 passed by the Tribunal whereby application for releasing balance 50% amount of fixed deposit has been rejected.

FAO No. 3004 of 2011

Counsel for the insurance company has assailed findings of the Tribunal on issue No. 1 ('*whether accident in question took place due to rash and negligent driving of vehicle No. HR 69B 3693 by respondent No. 1? OPP*') attributing rash and negligent driving to offending Truck bearing registration No. HR 69B 3693. It is argued that occurrence in question took place when car driven by Naresh Mandal rammed into the Truck going ahead. It is further argued that there is no evidence led by the claimants with regard to distance maintained between Truck and Car in order to show that the car driven by Naresh Mandal (since deceased) had maintained safe distance from the Truck, in compliance with the Road Regulations, 1989. In support of her contention, counsel has relied upon judgment of Hon'ble the Supreme Court ***Nishan Singh and others vs. Oriental Insurance Company Limited through Regional Manager and others, 2018 (2) R.C.R. (Civil) 891.***

With regard to compensation assessed by the Tribunal, counsel would urge that liability to pay income tax may be deducted in case the claimants are awarded any compensation.

There is no representation on behalf of the claimants who were earlier being represented by a counsel.

Before adverting to the submissions made by counsel for the insurance company, it is appropriate to recapitulate the facts in brief, attributing rash and negligent driving to the Truck in question. It is averred that on 25.05.2009 in the early morning, the deceased was going towards Delhi side in his Car. When he reached near Karhans Bus Stop, G.T. Road, offending Truck bearing registration No. HR 69-B 3693 over took Car bearing No. DL 6CK 0998 at a very high speed in a rash and negligent manner and driver of offending Truck stopped the vehicle by applying sudden brakes in middle of the road due to which car of the deceased struck from back side of the offending truck and deceased died at the spot. FIR No. 197 dated 25.05.2009 for offence punishable under Sections 279 and 304-A of the Indian Penal Code was registered in Police Station Samalkha, District Panipat against driver of the Truck.

The driver and owner of offending vehicle filed the joint written statement and denied averments raised in para 24 of claim application with the pleadings that police of police station Smalakha, Panipat in collusion with the claimants registered a false case against answering respondent Nos. 1 and 2 i.e. driver and owner of truck bearing No. HR 69B 3693.

To substantiate averments raised in para 24 of claim application and discharge onus of issue No. 1 with regard to occurrence being the result of rash and negligent driving of offending Truck, the claimants examined Constable Mahesh Kumar.

The Rules of the Road Regulations 1989 were framed by the Central Government in exercise of the powers conferred by Section 118 of the Motor Vehicles Act, 1988. Regulation 23 of the Rules deals with distance from vehicles in front. A relevant extract therefrom reads as follows:-

> "23. **Distance from vehicles in front:-** The driver of a motor vehicle moving behind another vehicle shall keep at a sufficient distance from that other vehicle to avoid collision if the vehicle in front should suddenly slow down or stop"

Regulation 24 provides for **abrupt brake** and says that no driver of a vehicle shall apply brake abruptly unless it is necessary to do so for safety reasons.

Hon'ble the Supreme Court in *Nishan Singh's* case (supra), in concluding lines of para 10 has held, quoted thus:-

> *"The expression 'sufficient distance' has not been defined in the Regulations or elsewhere. The thumb rule of sufficient distance is at least a safe distance of two to three seconds gap in ideal conditions to avert collision and to allow the following driver time to respond. The distance of 10–15 feet between the truck and maruti car was certainly not a safe distance for which the driver of the maruti car must take the blame. It must necessarily follow that the finding on the issue under consideration ought to be against the claimants.*

Reverting to case at hand, the claimants examined Mahesh Kumar Constable 1086/PPT to discharge onus of issue No. 1. He tendered into evidence his duly sworn affidavit Ex.PW2/A in Hindi. A relevant extract therefrom, translated in English, reads as under:-

> "*......At that time, a truck bearing No. HR 69B 3696 driven at a fast speed in a rash and negligent manner came from the side of Panipat and behind the truck, Maruti Car bearing No. DL 6CK 0998 was coming. In the meantime, the aforesaid truck abruptly applied brakes and Maruti car went underneath the truck and car driver sustained multiple injuries. When car driver was taken out of the car, he had already died.*

The witness was crossed examined at length by the contesting respondents before the Tribunal. Nothing was asked from Constable Mahesh Kumar as to the distance between Truck and Maruti Car much less that driver of Maruti Car was not maintaining sufficient distance from the Truck going ahead in order to bring home contention of the insurance company that either driver of Maruti Car is to be blamed for the accident or he can be attributed contributory negligence for the occurrence. Not only this, driver of offending vehicle did not appear in the witness box to explain the circumstances under which the occurrence in question took place. There are no materials on record to substantiate plea of the insurance company (though the same is otherwise beyond pleadings) that the accident happened due to failure of driver of Maruti Car to maintain sufficient distance from the Truck going ahead. This apart, driver and owner of offending vehicle did not raise any such plea that occurrence in question took place because of mistake on the part of driver of Maruti Car or the present is a case of contributory negligence of the deceased. In this view of the matter, the insurance company can neither derive any advantage to its contention from judgment in Nishan Singh's (supra) nor findings of the Tribunal on issue No. 1 can be faulted with and as such, liable to be affirmed and ordered accordingly.

This brings the Court to compensation assessed for the death of Naresh Mandal.

FAO 1539 of 2011

The Tribunal has awarded a sum of Rs.17,31,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.16,493/- (rounded off toRs.16,500.00)
Deduction for personal expenses	1/3rd
Multiplier	13
Loss of dependency	Rs.17,16,000.00
Loss of consortium to spouse	Rs.5,000.00
Transportation of dead body, final and last rites expenses	Rs.10,000.00

The plea of claimants is that the deceased was working with Luxmi Remote (India) Private Limited and his salary was Rs.24,780.00 per month. Vikas Jain, Senior Executive Accountant PW3 from Luxmi Remote (India) Private Limited was examined and he proved documents Ex.P1 to P7 and also proved documents Marked 'A' to 'C'. The Tribunal, on consideration of the documents produced by Vikas Jain (PW3) has recorded its conclusion that income of the deceased is Rs.16,493.00 per month for the purpose of assessing compensation.

As per salary certificate Ex.P1 for the month of April, 2009, the deceased got salary of Rs.24,000.00, out of which an amount of Rs.780.00 was deducted towards the employees' provident fund. According to certificate Ex.P2, basic salary of deceased for the month of

April 2009 was Rs.6,500.00, special allowance Rs.12,600.00, medical allowance Rs.1,250.00, transport allowance Rs.800.00 and House Rent Allowance Rs.2,850.00. An amount of Rs.780.00 was deducted towards provident fund. However, document mark 'A' shows that for the month of March 2009, the deceased got salary of Rs.18,073.00, out of which Rs.780.00 were deducted as contribution towards employees' provident fund. In the said document, there is no reference to special allowance of Rs.12,600.00 and, as such, the Tribunal has held that the deceased was not getting a fixed salary every month and he was getting special allowance also in some months and it appears that the payment of special allowance depended upon profits of the company. Accordingly, the Tribunal considered salary of the deceased at Rs.17,293.00 per month and by deducting Rs.800.00 towards transportation allowance, Rs.16,493.00 were taken into consideration for computing loss of dependency. Even if findings of the Tribunal are accepted on its face value that special allowance was not available to the deceased every month, the claimant cannot be denied benefit of special allowance for the months it was allowed. In the given scenario, interest of justice would be served if loss of dependency is computed by taking into consideration average gross salary in the months of March and April, 2009. Accordingly, loss of dependency is calculated at Rs.21,000.00 per month. After deducting lability to pay income tax i.e. Rs.9,200.00, annual loss of dependency is Rs.2,42,800.00 (Rs.2,52,000-Rs.9,200.00).

The plea of claimants is that the deceased was 37 years old at the time of occurrence. As deceased was in the age bracket of 36-40, multiplier of 15 would be applied. The claimants shall be entitle to addition in income for future prospects at the rate of 40%.

The application for compensation has been filed by the widow, three minor children and mother of the deceased. Taking into consideration number of dependents on income of the deceased, deduction for personal expenses would be 1/4th. In view of the above, loss of dependency is calculated at Rs.38,24,100.00 (Rs.36,42,000.00 *i.e.* Rs.2,42,800 x 15 + Rs.14,56,800.00 (40% addition) – Rs.12,74,700.00 (deduction 1/4th)).

Under conventional heads, claimants shall be entitle to Rs.1,90,000.00, detailed hereunder:-

Loss of consortium to claimants No. 1 to 4	Rs.1,60,000/- (40,000 each)
Funeral expenses	Rs.15,000.00
Loss to estate	Rs.15,000.00

Total compensation comes to Rs.40,14,100.00 and additional amount is Rs.22,83,100.00 (Rs.40,14,100.00 - Rs.17,31,000.00) payable with interest @ 7.5% per annum from the date of petition till realization to claimants No. 1 to 4 in the ratio 20:25:25:30. The amount falling to share of minors shall be invested in Fixed Deposit till they attain the age of majority or for a period of three years, whichever is later. However, interest accruing on FDRs shall be payable to their mother for meeting their expenses.

CR No. 7240 of 2011

Kavita Mandal has filed Civil Revision to assail order dated 10.09.2011 whereby application for release of remaining 50% amount ordered to be deposited for a period of three years has been rejected. As the period of three years stipulated in the award has expired in the year

2014, nothing survives for consideration of this Court, accordingly the petition is disposed of.

In view of what has been discussed hereinbefore, the appeal filed by the insurance company is dismissed. However, the appeal preferred by the claimants is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

16.11.2018
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