IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3894 of 2010 (O&M)
Date of Decision: 20.09.2018

Roshan Lal and another

...........Appellants

Versus

Gulab Singh and another

.........Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Ashish Gupta, Advocate for the appellants.

Mr. Sawan Choudhary, Advocate for respondent No.1.

Mr. Subhash Goyal, Advocate for respondent No.2- Insurance Co.

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MAHABIR SINGH SINDHU, J.

Present appeal has been filed by the claimants/appellants under Section 173 of the Motor Vehicles Act, 1988 *(for short 'Act')* against the impugned award dated 22.12.2009, passed by learned Motor Accident Claims Tribunal, Karnal (*for short 'Tribunal'*) for enhancement of compensation on account of death of Rishi Pal (*for short 'deceased'*).

(2) Claim petition was filed under Section 163-A of the Act with the averments that on 02.12.2007, deceased departed from Kalyan Petrol Pump, Sector 12, Karnal on his motorcycle bearing registration No.HR-05-T-8018 and Gulab Singh (owner of the motorcycle) was the pillion rider. At about 8:30 PM, when they reached near Shiv Mandir, Sector 7 on G.T. Road, unknown vehicle hit the motorcycle of deceased and due to which, he suffered injuries and shifted to General Hospital, Karnal and later on referred to PGIMS, Chandigarh, where he died. A sum of ₹ 50,000/- was spent on transportation, funeral and last rites of deceased. The accident in question happened on account of the use of above motorcycle, driven by deceased. It is averred that at the time of accident, deceased was working as Tyre Mechanic and earning ₹ 40,000/- per annum and he was 20 years of age.

In response to the claim petition, reply was filed by respondent No.1-Gulab Singh and admitted the contents of the claim petition, but he submitted that claim made is on the higher side.

Respondent No.2/Insurance Company filed separate reply while raising preliminary objections, *inter alia*, cause of action, locus standi, jurisdiction as well as false claim petition. Further submitted that deceased was not a 3rd party and, therefore, not covered under the provisions of Section 163-A of the Act. Age, income, occupation of deceased and lodging of FIR were also denied.

On the basis of the pleadings, learned Tribunal framed following Issues:-

1. *Whether death of Rishi Pal on 2.12.2007 occurred on account of use of motorcycle No.HR-05T/8018? OPP.*
2. *Whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP.*
3. *Relief.*

In order to prove their case, appellant No.1-Roshan Lal appeared as PW 1 and supported the contents of claim petition and also produced the documentary evidence by way of the following documents:-

Ex.P-1	:	Copy of driving licence of Rishi Pal
Ex.P-2	:	Copy of FIR No.651 dated 03.12.2007, under Sections 279, 337, IPC
Ex.P-3	:	Copy of Rukka
Ex.P-4	:	Copy of Post Mortem Report of Rishi Pal
Mark A	:	Photograph of motorcycle.

On the other hand, respondent No.1 Gulab Singh appeared as RW 1 and brought on record the following documents:-

Mark R-1	:	Copy of Registration Certificate of Motorcycle
Mark R-2	:	Copy of insured Cover Note
Ex.R-3	:	Copy of Insurance Policy

Learned Tribunal decided Issue No.1 in favour of the appellants and held that deceased died in a motor-vehicular accident on account of use of motorcycle No.HR-05-T-8018 on 02.12.2007.

While deciding Issue No.2, learned Tribunal came to the conclusion that deceased was 20 years of age at the time of accident and his annual income was assessed as ₹ 40,000/-.

Learned Tribunal, while relying upon the provisions of Second Schedule of the Act and taking into consideration the age of deceased's father, namely, Roshan Lal (appellant No.1) as 43 years, applied the multiplier of 15. Still further, after making a deduction of 1/3rd, in terms of Note-1 of the Second Schedule, worked out the compensation of ₹ 4,00,005/-. In addition, appellants were granted the compensation of ₹ 2000/- towards funeral expenses and ₹ 2500/- towards loss of estate. Thus, a total compensation of ₹ 4,04,505/- along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization was awarded. Both the respondents i.e. owner and Insurer of the motorcycle were held liable to pay the amount of compensation jointly and severally.

(3) During the course of hearing, it has been brought to the notice of this Court that against this very award, FAO No.3723 of 2010 was preferred by the Insurance Company titled as "**Reliance General Insurance Company Limited** *Versus* **Roshan Lal and others**" and which was allowed by learned

Single Judge of this Court, vide order dated 06.01.2011 and the Insurer was absolved from the liability to pay the compensation while observing that amount of compensation, which was deposited by the Insurance Company, shall be permitted to be withdrawn. It is agreed between both the parties that order dated 06.01.2011, passed by this Court, has attained finality and is not the subject matter of challenge in any proceedings.

(4) Learned Counsel for the appellants has confined his prayer only on the point of multiplier. It is contended that at the time of accident, deceased was 20 years of age, therefore, in view of the Second Schedule, the multiplier of '16' is attracted instead of '15'.

On the other hand, learned Counsel for the respondents have not disputed the contentions of learned Counsel for the appellants regarding the age of deceased.

Therefore, this Court is of the opinion that instead of applying the multiplier on the basis of age of the father of deceased, learned Tribunal ought to have applied the multiplier of 16 while keeping in view the age of deceased as 20 years.

Consequently, the findings of learned Tribunal on Issue No.2 regarding the multiplier of '15' is modified and the same is converted to '16'. Rest of the findings of impugned award, except liability, which has been modified in FAO No.3723 of 2010, are affirmed. As a result thereof, the "just compensation" payable to the appellants would be as under:-

Sr. No.	***Heads***	***Calculation***
(i)	*Annual Income of the deceased*	*₹ 40,000*
(ii)	*1/3rd of (i) deducted for personal expenses*	*₹ 13,334* *₹ 40,000 - ₹ 13,334 = ₹ 26,666*

Sr. No.	***Heads***	***Calculation***
(iii)	*Multiplier*	*16* *₹ 26,666 x 16 = ₹ 4,26,656*
(iv)	*Compensation for funeral expenses*	*₹ 2000*
(v)	*Compensation for loss of estate*	*₹ 2500/-*
	Total Compensation	***₹ 4,31,156***

Since in FAO No.3723 of 2010, as discussed in Para 3 of this order, the Insurance Company has been absolved, therefore, respondent No.1/owner would be liable to pay the compensation. However, in view of the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd.** *Versus* **Swarna Singh & Ors., (2004) 3 SCC 297; Mangla Ram** *Versus* **Oriental Insurance Co. Ltd., (2018) 5 SCC 656; Rani & Ors.** *Versus* **National Insurance Co. Ltd. & Ors., 2018 (9) SCALE 310 and Manuara Khatun and Others** *Versus* **Rajesh Kumar Singh and others, (2017) 4 SCC 796**, at first instance, the amount of compensation payable shall be made by the Insurance Company and Insurer would be at liberty to recover the same from the owner of the offending vehicle.

Payment, if already received by the appellants, shall be adjusted. The amount of compensation, payable to the appellants, be made within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off accordingly.

September 20, 2018 **(MAHABIR SINGH SINDHU)**
dkp/Gagan **JUDGE**

Whether speaking/reasoned	*Yes*
Whether Reportable	*Yes*