In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2292 of 2014(O&M)
Date of Decision: 23.4.2018

Rani and others

---Appellants

versus

Angrej Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Ms. Rupinder Kaur Manaise, Advocate
for the appellants-claimants
Respondent No. 1-ex parte
Ms. Vandana Malhotra, Advocate,
for the insurance company

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Rekha Mittal, J.

The claimants are in appeal seeking enhancement of compensation on account of death of Bodh Raj in a motor vehicular accident that took place on 4.1.2009.

The Motor Accidents Claims Tribunal, Gurdaspur (in short "the Tribunal") has awarded compensation of Rs. 4,80,800/-, detailed hereunder:-

Monthly income for the deceased	Rs. 3600/-
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	Rs. 4,60,800/-
Loss of estate	Rs. 5000/-
Loss of consortium	Rs. 10,000/-
Funeral expenses	Rs. 5,000/-

Counsel for the appellants-claimants would urge that the insurance has been exonerated of liability to pay compensation primarily on the ground that licence Ex. R1 of Angrej Singh respondent No. 1 was found to be fake, having not been issued by the Registering and Licensing Authority, Amritsar. It is argued that even if licence of the driver was found to be fake, insurance company cannot escape liability to pay compensation to the claimants though it may be entitled to press for right of recovery against the insured for having violated the terms and conditions of the insurance policy. In support of her contention, she has relied upon judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Swaran Singh and Ors.(2004) 3 SCC 297.**

To substantiate her plea with regard to enhancement of compensation, it is argued that the Tribunal has not allowed benefit of addition in income for future prospects @ 40%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported the award exonerating the insurance company of liability to pay compensation as the insured has been found guilty of giving the offending vehicle for driving to Angrej Singh who did not possess a valid licence. Compensation assessed by the Tribunal is adequate, just and reasonable.

The Tribunal has assessed income of the deceased at Rs. 3600/- per month by treating him as a casual labour. The plea of the claimants is that deceased was working as Circle Incharge in Excise Department, Gurdaspur at salary of Rs. 15,000/- per month. Counsel for the claimants has not disputed that there is no material on record to substantiate contention of the claimants in this regard. Under the circumstances, there is no justification for increase in income, accordingly, income of the deceased assessed by the Tribunal is affirmed. As the deceased was 35 years old, claimants shall be entitled to benefit of increase in income for future prospects @ 40%. Multiplier and deduction for personal expenses adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to **Rs. 6,45,120/-** [3600x12x16=6,91,200+2,76,480(40%) = 9,67,680 – 3,22,560(1/3rd)].

Under conventional heads, claimants shall be entitled to following compensation :-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is **Rs. 7,15,120/-** and the additional amount is **Rs.2,34,320/-** (7,15,120 - 4,80,800), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased, to be invested in a fixed deposit for a period of three years.

The Tribunal in para 27 of the award has dealt with the issue of driving licence Ex. R1 in the light of statement of Balraj Kaur, Clerk DTO Office, Amritsar RW1 examined to prove that driving licence Ex. R1 was not issued by the Registering and Licensing Authority, Amritsar. Even if licence possessed by the driver is found to be fake, insurance company cannot escape its obligation in law to pay compensation to the claimants and, at best, it can press for right of recovery against the insured. In this context, reference can be made to latest judgment of Hon'ble the Supreme Court **Pappu Vs. Vinod Kumar Lamba and another 2018(1) PLR 425** wherein the earlier judgment of Hon'ble the Supreme Court in Swaran Singh's case (supra) has been reiterated. In this view of the matter, the insurance company shall be liable to pay compensation to the claimants but it would be entitled to recover the same from the insured by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

23.4.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No