IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-100-2016(O&M)
Date of decision:-17.12.2018

Om Sudha and others

...Appellants

Versus

Vinod Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.V.K. Gupta, Advocate
for the appellant.

Mr.S.S. Sidhu, Advocate
for the respondent No.3 – Insurance Company.

****

H.S. MADAAN, J.

Petitioners – Om Sudha aged about 44 years – mother, Sushil Kumar aged 47 years – father, Anuj Kumar aged about 19 years – brother of Rajeev Kumar, an unfortunate victim of a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Vinod Kumar – driver, Geeta Negi – owner, United India Assurance Co. Ltd – insurer of car bearing registration No.HR-26-AZ-0696 claiming compensation to the tune of Rs.20 lacs on account of death of Rajeev Kumar in a mishap on 28.4.2014.

According to the claimants, on 28.4.2014 Rajeev Kumar was going to village Radaur from Jagadhri on motorcycle bearing registration No.HR02V-4711 make Hero Honda Splendor to meet his paternal aunt;

that his paternal uncle namely Parveen Kumar was following him on separate motorcycle; that Rajeev Kumar was driving the motorcycle at a normal speed on his correct left side of the road; at about 8:00 p.m. when Rajeev Kumar reached near village Dhaurang towards Radaur side on Yamuna Nagar – Radaur road, in the meanwhile a car bearing registration No.HR-26AZ-0696 make Tata Indica Vista of silver colour (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Vinod Kumar rashly and negligently in a zig-zag manner came from Radaur side and going on wrong side hit the motorcycle of Rajeev Kumar, resultantly Rajeev Kumar fell on the road and sustained multiple grievous injuries; that his motorcycle was also damaged; that Vinod Kumar – respondent No.1 stopped the vehicle at some distance and disclosed his name as Vinod Kumar son of Khushhal Singh, resident of H.No.696, Sector-9A, Gurgaon; thereafter he ran away from the spot leaving the offending vehicle at there. Injured – Rajeev Kumar was firstly taken to Civil Hospital, Yamuna Nagar from where he was taken to Jindal Hospital, Sector-17, HUDA, Jagadhri and then referred to PGI, Chandigarh. Rajeev Kumar succumbed to the injuries on 1.5.2014 during his treatment. FIR No.90 dated 29.4.2014 for the offences under Sections 279, 337 IPC was registered against respondent No.1 – Vinod Kumar on the basis of statement of Parveen Kumar, subsequently offence under Section 304-A IPC was added when Rajeev Kumar succumbed to the injuries suffered by him in the road side accident.

On notice, the respondents appeared. Respondents No.1 and 2 have filed a joint written reply in which they denied that respondent No.1

– Vinod Kumar was author of the accident by his rash and negligent driving of the offending vehicle, rather according to the answering respondents, the car in question was not involved in the accident. Nevertheless such respondents contended that the car was insured with United India Assurance Co. Ltd. at the relevant time.

The respondent No.3 – insurance company in the separate written reply refuted the assertions in the claim petition denying the involvement of offending car in the accident, finally coming up with a prayer for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed on 17.12.2014:-

1. Whether accident in question resulting into death of Rajeev Kumar accident took place on 28.4.2014 due to rash and negligent driving of car bearing registration No.HR-26-AZ-0696 by respondent No.1? OPP.
2. Whether petitioners are legal heirs of the deceased Rajeev Kumar and if yes, what amount of compensation the petitioners are entitled to and from whom? OPP.
3. Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy, if so, to what effect? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimants have examined Om

Sudha as PW1, Dr.Vinod Kumar as PW2, Sanjeev Kumar Pharmacist as PW3, Bhupinder Singh as PW4 and Parveen Kumar as PW5. The claimants have also tendered in evidence documents Ex.P8 to Ex.P13 and Mark-A to Mark-D.

On the other hand, respondents No.1 and 2 tendered in evidence documents Ex.R1 to Ex.R3 and respondents No.3 – insurance company has tendered in evidence documents Ex.R4 and Ex.R5.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners and against the respondents, issues No.2 and 3 in favour of the claimants, issue No.4 against the respondent No.3 being not pressed, resultantly the petition was allowed partly with costs and compensation of Rs.6,36,000/- was awarded to claimants payable by respondents No.1 to 3 jointly and severally along with costs. Out of the awarded amount, Rs.5 lacs were ordered to be given to claimant No.1 – mother, Rs.1 lac to claimant No.2 – father, remaining amount amount of Rs.36,000 to respondent No.3-brother of the deceased. As regards share of claimant No.1, it was directed that 1/3rd amount be paid to her immediately and out of the shares of claimants No.2 and 3, half of the amount be paid to them immediately, whereas remaining amount shall be deposited with some nationalized bank for one year and the claimants shall be entitled to receive interest thereon from time to time. They were also awarded interest @ 7.5% per annum from the date of institution of the petition till its realization.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to the claimants.

Notice of the appeal was given to respondents. Respondent No.3- insurance company had put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

In this case as per the case of the claimants, the deceased was aged about 24 years, which fact is not seriously disputed by the respondents. According to the claimants, he was running a milk dairy besides doing work of sale and purchase of animals and used to earn about Rs.20,000/- per month. However, the Tribunal did not find sufficient evidence on record with regard to such alleged avocation and income of the deceased. Therefore, his income was to be taken at par with a labourer and taken as Rs.7,000/- in the year 2014 when the accident had taken place. Taking of income of deceased as Rs.7,000/- per month is not seriously challenged by either of the parties.

The main grouse of the claimants is that the Tribunal has deducted 1/2 of such income of the deceased when it should have been 1/3rd keeping in view the number of dependents upon him for their livelihood. Such contention is misconceived. The Apex Court in ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** has clearly observed in para No.15 where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle and normally 50% is deducted as personal and living expenses because it is assumed that a bachelor would tend to spend more on himself. It was further observed that even otherwise, there is also the possibility of his getting married in a short time in which event the contribution to the parent/s and siblings is likely to be cut drastically. It was further observed that in absence of evidence to the contrary, the brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependent on the father.

Learned counsel for the claimants has however, referred to judgment ***Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram & Ors.*** in Civil Appeal No.9581 of 2018 arising out of SLP(Civil) No.3192 of 2018 submitting that therein the deceased was a bachelor. However, the deduction on account of personal expenses was taken to be $1/3^{rd}$ by the Tribunal, which was upheld by the High Court and the Apex Court.

However, learned counsel representing the insurance company submitted that the facts of that case was quite distinguishable inasmuch as the deceased was living in a village where he was residing with his father aged 65 years and an unmarried sister. It was for that reason, the deduction of $1/3^{rd}$ towards personal expenses of deceased was taken.

After hearing the rival contentions and going through the judgment ***Magma General Insurance Co. Ltd.***(supra), I find that of course the deduction towards personal expenses of deceased in that case was taken to be $1/3^{rd}$ on account the the peculiar circumstances when father of deceased was aged about 65 years and other member of the family was an unmarried sister. Both of them being dependent upon the deceased. In the instant case, father of the deceased Sushil Kumar claimant happened to be aged about 47 years, that means a middle aged person capable of earning and Anuj Kumar is aged 19 years. It is least likely that he was dependent upon earnings of the deceased. Such a young boy could be expected to work and earn for himself and if for any reason unable to do so would be dependent upon earnings of his father and not the brother. Therefore, the Tribunal had rightly taken the deduction towards personal expenses of the deceased, who was a young unmarried person to be 50% of his income.

The next argument of learned counsel for the claimants was that no amount was awarded towards the future prospects by the Tribunal, though the claimants were entitled to the same. In support of his contention, he has referred to authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, wherein it was observed that in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the aged of 40 years. In the instant case the deceased was aged less than 40 years and his income has been assessed to be Rs.7,000/- per month by the Tribunal, therefore, an addition of 40% towards future prospects is required to be made. Doing that the monthly income of the deceased is taken to be Rs.9,800/-.

The next grouse of the claimants is that the Tribunal has used multiplier of 13 keeping in view the ages of parents of the deceased and not that of the deceased himself. Learned counsel for the claimants has further referred to authority ***National Insurance Company Limited***

Versus Pranay Sethi and Ors.(supra) wherein it has been observed that age of the deceased should be the basis for applying the multiplier. Learned counsel for the insurance company has conceded this legal position. It being so, in terms of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra) multiplier of 18 is required to be used since it has been observed that for age group of 15 to 25 years multiplier of 18 would be applied.

In that way the compensation to which the claimants is entitled is worked out as under:

Sr. No.	**Head of compensation**	**-**	**Amount in rupees**
1.	Monthly income of deceased	-	9,800
2.	50% deduction on account of personal expenses	-	4900 (9,800–4,900)
3.	Annual amount of dependency	-	58,800 (4900 x 12)
4.	Amount of compensation after applying the multiplier	-	10,58,400 (58,800 x 18)

In view of the authority, ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), no compensation is to be awarded on account of loss of love and affection.

The claimants are awarded Rs.28,000/- on account of medical treatment of deceased and Rs.40,000/- awarded to the claimants towards transportation and funeral expenses.

In view of the authority, ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The Tribunal has awarded some amount towards medicines. The total figure comes to Rs.40,000/-. This amount is kept as such.

The total amount is thus work out to Rs.11,26,400/- (10,58,400 + 28,000+40,000).

The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,90,400/-. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. The other terms and conditions given in the relief clause regarding disbursement of the compensation amount shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

17.12.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No