In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:3.10.2018

FAO No. 3735 of 2014(O&M)

Shriram General Insurance Company Limited

---Appellant

versus

Prem Singh and others

---Respondents

FAO No. 5482 of 2015(O&M)

Prem Singh

---Appellant

versus

Rakesh Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Lalit Kumar, Advocate
and Ms. Sanya Sapra, Advocate
for Shriram General Insurance company

Mr. D.S.Nain, Advocate,
for the appellant in FAO- 5482 of 2015
for respondent No. 1 in FAO- 3735 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos. 3735 of 2014 and 5482 of 2015 as these have emerged out of the same award dated 27.7.2013 passed by the Motor Accidents Claims Tribunal, Kaithal (in short "the Tribunal") whereby compensation has been assessed on account of death of Naresh Kumar son of Prem Singh in a motor vehicular accident that took place on

16.11.2010.

FAO No. 3735 of 2014 has been filed by Shriram General Insurance Company Limited (hereinafter to be referred to as "the insurance company") whereas the other appeal has been preferred by claimant seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been preferred to assail quantum of compensation assessed by the Tribunal.

CM No. 11186-CII of 2014 in FAO-3735 of 2014

Prayer in this application is for condoning delay of 185 days in filing the appeal.

Heard.

Allowed as prayed for. Delay of 185 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 3735 of 2014(O&M)
FAO No. 5482 of 2015(O&M)

The Tribunal has awarded compensation of Rs. 8,79,800/-, detailed hereunder:-

Monthly income of the deceased	Rs. 5400/-
Deduction for personal expenses	1/3rd
Multiplier	18
Loss of dependency	Rs. 8,74,800/-
Funeral expenses	Rs. 5,000/-

However, the claimant has been held entitled to 50% of the amount i.e. 4,37,400/- as 50% negligence has been attributed to driver of truck No. HR-

46C-6000 driven by Shiv Kumar in which the deceased was travelling being conductor.

Counsel for the insurance company would argue that as the deceased was unmarried son of Prem Singh, admissible deduction for personal expenses should be 50%. The Tribunal has assessed income of the deceased at Rs. 5400/- per month but minimum wage of an unskilled worker at the relevant time was less than Rs. 4500/- per month.

Counsel for the claimant, on the contrary, has assailed findings of the Tribunal allowing only 50% of the amount assessed towards compensation. It is argued that even if contributory negligence is attributed to Shiv Kumar, driver of the aforesaid truck, claimant is entitle to seek compensation from either of the joint tort-feasors. In addition, it is argued that compensation assessed by the Tribunal may be enhanced by allowing benefit of increase in income for future prospects and adequate compensation under conventional heads.

Perusal of findings of the Tribunal on issue No. 1 would reveal that the Tribunal has held Rakesh Kumar, drvier of tractor bearing No. HR-13E-5240 and Shiv Kumar of truck No.HR-46C-6000 to be equally responsible for the accident in question and accordingly the insurance company of tractor is held liable to pay compensation to the extent of half of the awarded amount. This finding of the Tribunal is patently false and is the result of non-application of mind. The Tribunal has failed to appreciate the legal position in right perspective and committed a gross error by denying the claimant benefit of entire compensation assessed qua death of Naresh Kumar.

Indisputably, no negligence in the occurrence has been attributed to Naresh Kumar as he was not driver of either of the vehicles involved in the occurrence. As has been rightly argued by counsel for the claimant, claimant is entitle to get compensation from either of the joint tort-feasors even without impleading the other vehicle(s) involved in the occurrence to be a party in the claim application. That being so, findings of the Tribunal that claimant shall be entitle to half of the amount assessed can not be allowed to sustain and accordingly modified with the observations that claimant shall be entitle to entire compensation found payable qua death of Naresh Kumar.

This brings the court to quantum of compensation payable to the claimant. The deceased was working as conductor on truck driven by Shiv Kumar. Taking a clue from the notification fixing minimum wages at the relevant time, income of the deceased is assessed at Rs. 4400/- per month. The application for compensation has been filed by father of the deceased and admissible deduction for personal expenses would be 50%. Claimant shall be entitle to increase in income for future prospects @ 40%. The deceased was 20 years old unmarried son of the claimant. Admissible multiplier would be 18, in the light of judgments of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**, **Munna Lal Jain vs. Vipin Kumar Sharma 2015 (3) RCR (Civil) 447** and **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.** In this manner, loss of dependency is calculated at Rs. 6,65,280/- [4400 x 12 x18= 9,50,400 +3,80,160(40%)= 13,30,560-6,65,280(50%)].

Under conventional heads, claimant shall be entitle to Rs.

70,000/-, detailed hereunder:-

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

Total compensation is Rs.7,35,280/- and the additional amount is Rs. -2,97,880/- (7,35,280-4,37,400), payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 176 days in refiling and 389 days in filing the appeal.

The appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

3.10.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No