**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 18.7.2018

1. **FAO No. 3820 of 2014(O&M)**

P.D. Gupta …..Appellant

VERSUS

Asha Devi and others .....Respondents

Present: Ms. Sonal Datta, Advocate for the appellant.

Mr. Madan Gupta, Advocate for respondents No.1 and 2.

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2. **FAO No. 3207 of 2015(O&M)**

Asha Devi and another …..Appellants

VERSUS

Amrik Khan and others .....Respondents

Present: Mr. Madan Gupta, Advocate for the appellants.

Ms. Sonal Datta, Advocate for respondent No.2.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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REKHA MITTAL, J. (Oral)

CM No.11655-CII of 2014

Prayer in this application is for condoning delay of 12 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of counsel for the appellant, the application is allowed. Delay of 12 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.11656-CII of 2014

Prayer in this application is for condoning delay of 20 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of P.D. Gupta – appellant, the application is allowed. Delay of 20 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos.3820 of 2014 and 3207 of 2015

This order will dispose of FAO Nos.3820 of 2014 and 3207 of 2015 as these have emerged out of the same award dated 08.10.2013 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been awarded on account of death of Vijay Mohan, son of the claimants in a motor vehicular accident that took place on 22.03.2012.

FAO No.3820 of 2014 has been filed by owner of the offending vehicle i.e. Truck No.PB-10-CX-8571 whereas other appeal has been preferred by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs.13,61,500/- detailed hereunder:-

Monthly income of the deceased	Rs.13500/-
Addition for future prospects	50%
Deduction for personal expenses	50%

Multiplier	11
Loss of dependency	Rs.13,36,500/-
Expenses on funeral	Rs.25,000/-

As per case set up by the claimants, on the fateful day of 22.03.2012 at about 10 PM, Vijay Mohan along with Amit Pandey started for their residence at Guru Teg Bahadur Nagar, Jamalpur, Ludhiana from their office situated at Swarn Complex, Giaspura, Ludhiana on their respective motorcycles. Vijay Mohan was on motorcycle No.PB10-DB-7986 and Amit Pandey was following him on separate motorcycle. At about 10.15 PM, when they crossed Giaspura Railway Crossing and reached 100-150 yards ahead of main gate of Upper India Steel, truck bearing No. PB-10-CX-8571 came from the side of railway crossing, at a very fast speed being driven in a rash and negligent manner and struck against motorcycle of deceased Vijay Mohan from cleaner's side and Vijay Mohan fell down in front of the truck. The truck dragged Vijay Mohan and his motorcycle about 15 feet ahead. Amit Pandey and passersby raised alarm whereupon the truck driver stopped and alighted from the truck. Amit Pandey inquired the name and address of the truck driver who disclosed his name as Amrik Khan. As Amit Pandey started caring for Vijay Mohan, truck driver slipped from the place of occurrence leaving the truck there. Amit Pandey called for the ambulance and rushed Vijay Mohan to Civil Hospital, Ludhiana and himself went to Guru Teg Bahadur Nagar for intimating the claimants and taking money from his house. When Amit Pandey along with his relatives reached Civil Hospital, Ludhiana, Vijay Mohan had succumbed to his injuries. FIR No.53 dated 23.03.2012 was registered on the statement made by Amit Pandey.

The driver and owner of the offending vehicle filed their joint written statement and in turn denied that the accident took place due to rash and negligent act of respondent No.1.

The controversy between the parties led to framing of issues reproduced in para 5 of the award. To prove their case, one of the claimants Chander Parkash appeared in the witness box and the claimants examined Amit Pandey CW-2 and Amrish Kumar, Tax Assistant, CW-3. To rebut evidence of the claimants, Amrik Khan, driver of the offending vehicle appeared in the witness box.

For the sake of convenience, owner of the vehicle would be referred as the appellant whereas the claimants would be referred as such.

Counsel for the appellant has assailed findings of the Tribunal on issue No.1 by referring to the facts elicited in testimony of Amrik Khan RW-1. It is argued with vehemence that as the deceased came from kutcha portion towards the metalled road and struck against backside of the truck in question, no rashness and negligence in the occurrence can be attributed to Amrik Khan, driver of the truck in question. It is further argued that no sooner Amrik Khan learned about motorcycle of the deceased being entangled at the back of truck, he immediately stopped the same, therefore, he cannot be condemned for negligence attributable to the deceased. It is further argued that testimony of Amit Pandey with regard to his presence at the spot becomes doubtful as Chander Parkash and Amit Pandey have contradicted each other if Vijay Mohan was running business jointly with Amit Pandey as Chander Parkash had stated that Vijay Mohan was doing his independent business and the same was not in partnership.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 and so also entitlement of the claimants to get compensation. It is argued with vehemence that driver and owner of the offending vehicle altogether denied the accident, therefore, anything said by Amrik Khan RW-1 in his testimony is beyond pleadings and cannot be looked into. Another submission made by counsel is that testimony of Amrik Khan rather supports plea of the claimants that accident in question took place with the truck in question. It is further argued that Amrik Khan was put to trial, after due investigation of FIR No.53 dated 23.03.2012 lodged at the behest of Amit Pandey, therefore, he had every reason to deny the accident in order to escape his criminal as well as civil liability.

To substantiate his plea with regard to enhancement of compensation, it is argued that though the Tribunal has taken note of income tax returns proved by Amrish Kumar, a witness from the Income Tax Department but the Tribunal has committed a serious error by assessing income of the deceased at Rs.15,000/- per month as against his annual income to the tune of Rs.2,46,390/- after deducting income tax reflected in the income tax return Ex.C3 for the assessment year 2011-12 filed on 21.12.2011. In addition, it is argued that as the deceased was less than 26 years of age, appropriate multiplier in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** may be allowed. Adequate compensation may be allowed under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.**

Counsel representing the appellant has supported assessment made by the Tribunal with the plea that there is no justification for enhancement of compensation.

I have heard counsel for the parties, perused the paper-book and records.

The claimants, in para 23 of the application for compensation have given detailed account as to how the occurrence in question took place due to rash and negligent driving of truck bearing No.PB10-CX-8571 when the deceased had already crossed Giaspura Railway Crossing and reached 100-150 yards ahead of the main gate of Upper India Steel. Respondents No.1 and 2 before the Tribunal filed the written statement and in response to para 23 of the claim application, it has been averred that there was no accident of truck No.PB10-CX-8571 with motorcycle bearing No.PB10-DB-7986 on 22.03.2012 at 10.15 PM. It was further denied that accident took place on account of rash and negligent driving of respondent No.1. All other material averments contained in para 23 of the application were denied in toto.

Amit Pandey, one of the eye-witnesses of the occurrence and author of FIR No.53 dated 23.03.2012 appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.CB. He reiterated the version set up in para 23 of the claim application. Counsel for the appellants has failed to point out any materials brought forth in cross examination of Amit Pandey to create a slightest doubt with regard to his presence at the spot or being an eye witness to the occurrence. On the contrary, Amrik Khan, driver of the offending vehicle in his testimony on oath has admitted his presence at the spot and accident being caused when the motorcycle driven by the deceased entangled with the truck. As has been rightly argued by counsel for the claimants, facts elicited in the testimony of Amrik Khan, in an effort to explain as to how the accident occurred or to attribute negligence to the deceased, cannot be looked into being beyond pleadings. Indisputably, Amrik Khan was put to trial after due investigation of FIR registered at the behest of Amit Pandey and the same corroborates version of the claimants that accident is the result of rash and negligent driving of Amrik Khan while driving truck No.PB10-CX-8571. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal upholding plea of the claimants that accident is the result of rash and negligent driving of offending vehicle by Amrik Khan, its driver. As such, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The claimants examined an official of the Income Tax Department and he proved income tax returns Ex.C3 and C4. As per the latest income tax return filed by the deceased, his gross income minus tax liability was Rs.2,46,390/-. In view of the documentary evidence with regard to income of the deceased, there is no option except to hold that deceased was earning Rs.2,46,390/- per annum at the time of death. Claimants shall be entitled to benefit of addition in income for future prospects at the rate of 40%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed.

The Tribunal has applied multiplier of 11 on the basis of age of mother of the deceased. In the light of judgments of Hon'ble the Supreme Court **Smt. Sarla Verma's case** (supra), **Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447** and **Pranay Sethi and others case (supra)**, admissible multiplier would be on the basis of age of the deceased. In the income tax returns, it is recorded that the deceased was born on 11.12.1986. The occurrence in question took place on 22.03.2012. Meaning thereby that deceased was 25 years and 3 months old at the time of occurrence. The admissible multiplier in the light of judgment **Smt. Sarla Verma's case** (supra) would be 18. In this manner, loss of dependency comes to Rs.31,04,514/- [Rs.44,35,020/- (Rs.2,46,390/- x 18) + Rs.17,74,008/- (40% future prospects) – Rs.31,04,514/- (50% deduction towards personal expenses).]

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and Rs.15,000/- for loss of estate.

In view of the above, total compensation comes to Rs.31,34,514/- and the additional amount is Rs.17,73,014/- (Rs.31,34,514/- - Rs.13,61,500/-) payable with interest at the rate of 7.5% per annum from the date of petition till realization, except for the period of delay of 435 days, to mother of the deceased.

For the foregoing reasons, the appeal filed by the appellant fails and is accordingly dismissed. However, appeal filed by the claimants is partly allowed in the aforesaid terms. No order as to costs.

JULY 18, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no