IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:22.5.2018

1. FAO No.3615 of 2015(O&M)

New India Assurance Company Limited

…..Appellant

VERSUS

Dharam Pal and others

.....Respondents

Present: Mr. Jastej Singh, Advocate for the appellants.

Mr. V.B. Aggarwal, Advocate for the respondents-claimants.

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2. **FAO No.7936 of 2015(O&M)**

Dharam Pal and another

…..Appellants

VERSUS

Inderpal Singh and others

.....Respondents

Present: Mr. V.B. Aggarwal, Advocate for the appellants.

Mr. Jastej Singh, Advocate for the respondents.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.3615 and 7936 of 2015 as these have emerged out of the same award dated 06.02.2015 passed by the Motor Accidents Claims Tribunal, Ropar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Vijay Sharma in a motor vehicular accident that took place on 14.02.2015.

FAO No.3615 of 2015 has been filed by the New India Assurance Company Ltd. (hereinafter to be referred as the Insurance Company) whereas FAO No.7936 of 2015 has been filed by the claimants seeking enhancement of compensation.

As per the case set up by the claimants, on 14.02.2015 accident was caused by Inderpal Singh – respondent No.1 while driving bus No.PB-01A-1827. After the accident, Inderpal Singh took the injured to PGI, Chandigarh and got him admitted. The police was called by doctors of PGI. Inderpal made statement to the police in PGI and got the case registered against unknown person. During investigation, Naresh Kumar son of Chhote Ram made a statement to the police on the basis whereof it was revealed that accident was caused due to rash and negligent driving of Bus No.PB01-A-1827 by Inderpal Singh while the deceased was travelling on motorcycle No.CH01-AL-293.

Inderpal Singh – respondent No.1 filed the written statement pleading that no accident as alleged has taken place and the story given in the claim application is false and concocted. Respondent No.2 also filed written statement and raised the same plea as was taken by respondent No.1.

The insurance company – respondent No.3 contested claim application with the averments that claimants filed false case in connivance with respondents No.1 and 2 and the police. It is averred that driver of the bus and motorcycle did not have valid RC, route permit and fitness and driving licence.

The Tribunal framed the following issues for determination:-

1. Whether the death of Neeraj sharma occurred in a motor vehicular accident on 14.2.2014 at about 9.00 p.m. in the area of bus Stand Chandi Mandir, due to rash and negligent driving of Bus No. PB-01-A-1827 being driven by respondent No. 1.OPP
2. If issue No. 1 is proved, whether the claimants being the legal heirs of Neeraj Sharma are entitled to any compensation? If so from whom and to what amount?OPP
3. Whether the respondent No. 1 was not holding any valid and effective driving licence on the date of alleged accident?OPR
4. Whether the claim petition is not maintainable?OPR
5. Whether the offending vehicle was not holding a valid RC, route permit, fitness certificate and insurance at the time of accident?OPR
6. Relief.

To prove their case, claimants examined Dr. Aarti from GMCH, Sector 32, Chandigarh, ASI Nasib Singh PW-2, Dr. Sewa Singh, Senior Resident Ortho, PGI PW-3, Bhagwan Dass, Criminal Ahlmad PW-4, Naresh Kumar PW-5, Gopal Singh PW-6, Madan Mohan Sharma PW-7 and Dharampal PW-8.

To rebut evidence of the claimants respondents No.1 to 3 tendered into evidence documents.

The Tribunal answered issues No.1 and 2 in favour of the claimants and assessed compensation to the tune of Rs.13,74,900, detailed hereunder:-

Monthly income of the deceased	Rs.15,000/-
Addition in income for future prospect	30%
Deduction for personal expenses	50%
Multiplier	11
Loss of dependency	Rs.12,87,000/-
Expenses on medical treatment	Rs.72,900/-
Funeral Expenses	Rs.10,000/-
Loss to estate	Rs.5,000/-

Counsel for the insurance company would argue that the claimants examined Naresh Kumar PW-5 and, Gopal Singh PW-6, to discharge onus of issue No.1. Naresh Kumar in his cross examination has admitted that his statement was recorded in the Court wherein case is pending against the driver and copy of the statement is Ex.R1 which was signed by him. He further admitted that the statement Ex.R1 is true and correct. It is argued with vehemence that in his statement Ex.R1, Naresh Kumar has denied that accident was caused by Inderpal due to his rash and negligent driving. Naresh Kumar turned hostile and was declared as such on the request of Public Prosecutor. In his cross examination by the Public Prosecutor, he denied correctness of statements Ex.PW1/A and PW1/D made to the police and further denied the accident being caused due to rash and negligent driving of the bus in question. It is argued that in view of testimony of Naresh Kumar before the criminal Court that is admitted to be correct by the witness, facts narrated by him in his affidavit filed by way of examination in chief attributing rash and negligent driving to Inderpal while driving the offending vehicle cannot enure to benefit of the claimants. In addition, it is argued that Gopal Singh PW-6 was introduced later to support cause of the claimants when otherwise said Gopal Singh neither approached the police for recording his statement nor shifted the injured to the hospital despite the fact that he knew Neeraj who belongs to Nangal and statedly attended his cremation. It is further argued that as Naresh Kumar failed to support the prosecution version and admitted correctness of his statement recorded in criminal proceedings and Gopal Singh is a created witness, claimants have failed to discharge onus of issue No. 1.

To assail assessment of income, it is argued that testimony of Madan Mohan Sharma PW-7 cannot form the basis to affirm findings of the Tribunal that deceased was working with Madan Mohan Sharma at a salary of Rs.15,000/- per month.

Counsel representing the claimants has supported findings of the Tribunal on issues No.1 and 2. However, it is argued that as the deceased was less than 25 years old, addition in income for future prospects should be 40%. Adequate compensation may be allowed under conventional heads. Multiplier of 18 is admissible on the basis of age of the deceased in place of 11 on the basis of age of father of the deceased, allowed by the Tribunal.

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

The claimants examined Naresh Kumar PW5 and Gopal Singh PW6 to establish their plea that accident occurred due to rash and negligent driving of the offending bus by Inderpal Singh on the fateful day on 14.2.2015. Naresh Kumar was confronted with his statement Ex. R1 recorded in criminal proceedings. He has admitted that Ex. R1 is the copy of his statement recorded in the case against driver pending in the Court at Panchkula. He has also admitted that he signed the statement and statement Ex. R1 is absolutely true and correct.

Perusal of Ex. R1 would reveal that Naresh Kumar did not support cause of the prosecution and was declared hostile. He failed to connect offending vehicle and Inderpal Singh with the accident in question. The Tribunal has not adverted to cross examination of Naresh Kumar while holding that claimants have been able to prove their case on the basis of testimony of Naresh Kumar corroborated by Inderpal Singh.

Taking into consideration testimony of Naresh Kumar recorded before the criminal court which is accepted to be true and correct by the witness, claimants cannot derive much benefit from statement of Naresh Kumar to prove their case that accident was caused by the offending vehicle due to rash and negligent driving by Inderpal Singh. However, facts elicited in cross examination of Naresh Kumar certainly prove that Inderpal Singh was put to trial for causing the accident. The said fact has also been proved on the basis of testimony of ASI Nasib Singh PW2 and Bhagwan Dass Criminal Ahlmad PW4 in whose statement copy of charge sheet is marked as Ex. PW4/A.

The claimants examined Gopal Singh, another witness to prove that accident was caused due to rash and negligent driving of offending bus No. PB-01-A-1827. Gopal Singh tendered into evidence his duly sworn affidavit Ex. PW6/A and narrated the occurrence in detail. The witness was subject to cross examination by counsel for the respondents before the Tribunal. Except the fact that Gopal Singh did not record his statement before the police in the criminal case, nothing tangible and material has been brought forth to discard or disbelieve his testimony. Counsel for the insurance company has failed to point out any materials brought forth in cross examination of Gopal Singh to arrive at a conclusion that Gopal Singh was not present at the spot or he has been introduced later to support cause of the claimants. Gopal Singh would not be a beneficiary if application for compensation is allowed. In addition, Inderpal Singh, driver of the offending vehicle did not appear in the witness box to counter testimony of Gopal Singh and other evidence adduced by the claimants, an adverse inference is liable to be drawn against him for his failure to appear in the witness box without any tangible explanation. Inderpal Singh was the one who brought injured Neeraj to PGI and lodged FIR against unknown person. However, during investigation, Inderpal Singh was found to be guilty of causing the accident due to his rash and negligent driving. Counsel for the insurance company has failed to advance any meaningful arguments that the offending bus was involved in the occurrence as a result of collusion between the claimants and driver/owner of the vehicle in question. I would hasten to add that proceedings before the Tribunal are summary in nature and require to be decided on the touch-stone of balance of probabilities. In view of discussion made hereinbefore, I do not find any reason to interfere in findings of the Tribunal that the claimants have discharged onus of issue No. 1 by proving that accident took place due to rash and negligent driving of offending bus by Inderpal Singh. Accordingly, findings of the Tribunal on issue No.1 are liable to be affirmed and order accordingly.

This brings the court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed income of the deceased at Rs. 15,000/- per month on the basis of testimony of Dharampal PW8, one of the claimants and Madan Mohan Sharma PW7. Madan Mohan Sharma was examined to prove that the deceased was working as a Supervisor with the concern of Madan Mohan Sharma. Madan Mohan Sharma produced on record documents Ex. PW7/B to PW7/G i.e vouchers with regard to payment of salary to Neeraj, stated to be signed by him. The witness also brought his income tax return regarding payment of salary to employees though their names have not been mentioned. Madan Mohan Sharma was subject to cross examination at length by counsel for the respondents before the Tribunal but failed to shatter evidential value of his testimony or his credibility and veracity. Admittedly, the respondents did not adduce any evidence to rebut testimony of Madan Mohan Sharma PW7. The Tribunal has rightly relied upon testimony of PW7 to record a finding that deceased was earning Rs. 15,000/- per month. As the deceased was 30 years old, admissible increase for future prospects would be 40% and appropriate multiplier 17. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**, **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298** and **Munna Lal Jain vs. Vipin Kumar Sharma 2015(3) RCR (Civil) 447**. The Tribunal has rightly allowed deduction of 50% for personal expenses. In this manner, loss of dependency is calculated at **Rs. 21,42,000/-** [15000 x12x17=30,60,000 +12,24,000(40%)=42,84,000 -21,42,000(50%)].

Under conventional heads, claimants shall be entitled to **Rs. 30,000/-** namely Rs. 15,000/- for funeral expenses and another Rs. 15,000/- for loss to estate.

Dharampal, father of the deceased tendered into evidence his affidavit Ex. PW8/A and the original medical bills Ex. PW8/B to PW8/Z and PW8/A/1 to PW8/Z/41. The Tribunal has allowed reimbursement of medical expenses of **Rs. 72,900/-** and the same is affirmed.

In view of the above, total compensation is Rs.22,44,900/- and the additional amount is **Rs.8,70,000/- (**22,44,900- 13,74,900**),** payable with interest @ 7.5% per annum from the date of petition till realization except for the period of delay of 105 days in filing the appeal.

For the foregoing reasons, appeal filed by the insurance company is dismissed. However, appeal preferred by the claimants is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

22.5.2018 **(REKHA MITTAL)**
'D. Gulati'/paramjit **JUDGE**

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