IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 05.04.2018

FAO-3965-2015 (O&M)

THE ORIENTAL INSURANCE CO. LTD ... Appellant

Versus

SATYA DEVI AND ORS ... Respondents

FAO-7015-2015 (O&M)

SATYA DEVI AND ORS. ... Appellants

Versus

GURNAM SINGH AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.K. Bashamboo, Advocate
for the insurance company.

Mr. Rajesh Bansal, Advocate
for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3965 and 7015 of 2015 as these have arisen out of the same award dated 09.01.2015 passed by the Motor Accidents Claims Tribunal, Ropar whereby compensation has been awarded on account of death of Gurnam Singh in a motor vehicular accident that took place on 16.05.2014.

FAO No.3965 of 2015 has been filed by the Oriental Insurance Company Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.7015 of 2015 has been filed by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs.18,02,639/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.25,195/-
2. Multiplier	9
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.17,82,639/-
5. Expenses on funeral	Rs.10,000/-
6. Loss of estate	Rs.5000/-
7. Loss of consortium	Rs.5000/-

Counsel for the insurance company, at the outset, would inform that the appeal has been preferred primarily to assail findings of the Tribunal on issue No.1 whereby the entire blame for the accident has been fastened against driver of the alleged offending vehicle i.e. tipper No.PB-12-N-4594. It is argued that as the accident purportedly happened when the deceased was travelling on motorcycle No.HP-12-D-1330 Hero Honda Passion, stuck on the backside of aforesaid tipper lying parked on metalled portion of the road, it is sufficient to establish that the deceased failed to take reasonable care to ensure that there is no obstacle on his way. It is further argued that in view of testimony of Pritpal Singh PW2, witness examined by the claimants to discharge onus of issue No.1, it can be safely held that the present is a case of contributory negligence and accordingly claimants shall not be entitled to compensation to the extent of negligence attributable to the deceased. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Raj Rani and ors. VS. Oriental Insurance Company Ltd. and others, 2009 ACJ 2003**. Further reference has been made to judgment of this Court **The New India Assurance Company Ltd. Vs. Gurmail Singh and others, FAO No.1149 of 2009, decided on 28.07.2010.**

Counsel representing the claimants, on the other hand, has supported findings of the Tribunal on issue No.1 whereby it has been held that the accident took place because of rashness and negligence attributable to driver of tipper No.PB-12-N-4594 as he parked the vehicle in middle of the road without any indicators or reflectors. In addition, it is argued that no such plea has been raised by the driver and owner of the vehicle that present is a case of contributory negligence who on the contrary had denied the accident altogether. The driver of the offending vehicle did not appear in the witness box to counter testimony of Pritpal Singh much less to say something about contributory negligence of the deceased.

To substantiate claim of the claimants for enhancement of compensation, it is argued that the deceased was a regular employee of Swaraj since 1982. He was working as Junior Engineer Technical-1 and his last drawn pay was Rs.39,240.10 as per salary certificate Ex.P4. According to counsel, the Tribunal seriously erred by ignoring various allowances paid to the deceased and assessing loss of dependency only on the basis of basic pay and dearness allowance. Claimants are entitled to benefit of future prospects @ 15%. Adequate compensation may be allowed under conventional heads.

In reply, counsel for the insurance company has supported assessment made by the Tribunal.

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

Indisputably, as per case set up by the claimants, accident in question took place when the deceased travelling on his motorcycle hit against the alleged offending vehicle parked on the metalled road without any indicators and reflectors. Testimony of Pritpal Singh PW2 is silent as to at what speed the motorcycle was driven by the deceased. Pritpal Singh has stated that he was following the deceased at a short distance. Nothing has been deposed by him that he also could not sight the parked vehicle despite using reasonable care and observing traffic rules to ensure that there is no obstacle on his way ahead. He is silent that the deceased could not avoid collision. When the facts and circumstances of the present case are examined in the light of judgment of Hon'ble the Supreme Court **Raj Rani and others's case** (supra), there is no escape except to conclude that the present is a case of contributory negligence of the deceased.

In the referred authority, there is reference to earlier decision of the Apex Court **Pramodkumar Rasikbhai Jhaveri Vs. Karmasey**

Kunvargi Tak & Ors, 2002 ACJ 1720 (SC). It was observed in para 8:-

> *“The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong.”*

The driver of the offending vehicle did not appear in the witness box to counter testimony of Pritpal Singh or to deny that vehicle was not parked on the metalled road. In the given scenario, interest of justice would be served if negligence to the extent of 30% is attributed to the deceased and accordingly, the claimants shall be entitled to 70% of the compensation found to be payable to them. Resultantly, findings recorded by the Tribunal on issue No.1 are modified in the aforesaid terms.

This brings the Court to quantum of compensation assessed by the Tribunal. There is no denial that the deceased was working with Swaraj Foundry Division of Mahindra and Mahindra Limited. As per the certificate Ex.P4, deceased was working with the aforesaid concern since 28.05.1982. His gross salary was Rs.39,240.10. The deceased was being paid various allowances detailed in the certificate Ex.P4. Benefits of all the allowances except tea allowance shall be available to family of the deceased. In this context, reference to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313** is necessary. The Tribunal committed a serious error by disallowing various allowances while computing loss of dependency. Accordingly, income of the deceased at Rs.39,225/- per month shall be taken into account for computing loss of dependency. The annual income is Rs.4,70,700/- and after deducting income tax of Rs.22,070/-, net income available for computing loss of dependency is Rs.4,48,630/-. Claimants shall be entitled to benefit of increase in income for future prospects @ 15%. Deduction for personal expenses allowed by the Tribunal is affirmed.

The Tribunal has applied multiplier of 9. Counsel for the insurance company has argued that as the deceased was to retire on 30.09.2015, as deposed by Kuldeep Sharma PW3 the entire salary cannot be taken into consideration for computing loss of dependency by applying multiplier of 9. Contention raised by counsel for the insurance company is not tenable in the light of judgment of this Court **Jasmel Kaur and another VS. Sukhraj Singh and others, FAO No.4858 of 2012 and another connected case, decided on 07.02.2018**. In view of the above, loss of dependency is Rs.30,95,547/- (Rs.4,48,630 x 9) + (15% future prospects) - (1/3rd deduction for personal expenses).

Under conventional heads, claimants shall be entitled to

Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.31,65,547/-. Claimants shall be entitled to 70% of compensation assessed by this Court as 30% negligence has been attributed to the deceased. The additional amount of Rs.4,13,244/- (22,15,883 – 18,02,639) is payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

05.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No