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Versus

Hardyal Singh & others -- Respondents

2. FAO-5474-2016 (O&M)
Hardyal Singh & others --Appellants

Shri Ram Karan & others --Respondents

Present:- Mr. Vipul, Advocate for
Mr. Nitin Mittal and Mr. Ashok K. Sharma,
Advocate for Mr. Arun Sharma, Advocate
for the appellants.

Mr. Yowan Sharma, Advocate for respondents no.1 & 2.

Mr. Rajneesh Malhotra, Advocate for respondent no.7 in FAO-4964-2015 and for respondent no.3 in FAO-5474-2016.

TEJINDER SINGH DHINDSA.J (Oral)

This order shall dispose of FAO-4964-2015 (Raj Rani Vs. Hardyal Singh & others) and FAO-5474-2016 (Hardyal Singh & others Vs. Shri Ram Karan & others) as both these appeals arise out of award dated 8.5.2015 passed by the M.A.C.T, Panchkula.

Briefly it may be noticed that a claim petition under Section 166 of the Motor Vehicle Act was filed by the parents and two minor daughters for just and adequate compensation on account of death of Harbhajan Singh in a motor vehicle accident that took place on 30.1.2014. In the claim petition Raj Rani widow of the deceased was impleaded as proforma respondent no.4 by taking a stand that she had remarried immediately after the death of the deceased and even during the life time of Harbhajan Singh there was a matrimonial dispute *inter se* the parties and

even criminal proceedings had been initiated.

In the claim petition it was asserted that on 30.1.2014 Harbhajan Singh was proceeding on a motorcycle and was struck by a Tipper Truck bearing registration no. HR-37D-0182 and on account of which grievous injuries were suffered and he succumbed to the same on 4.2.2014. Criminal case bearing FIR No.38 dated 4.2.2014 was registered at Police Station, Chandi Mandir under sections 279, 337 I.P.C. It was claimed that deceased Harbhajan Singh was aged about 36 years at the time of death and was earning Rs.20,000/- per month from the work of welding. The claim petition was contested in terms of filing separate written statements on behalf of the respondents. Proforma respondent no.4 Raj Rani stated that she is the legally wedded wife of deceased and being the widow was entitled to compensation on account of death of her husband. It was further stated that claimant no.1 i.e. father of the deceased has retired from the army and has even served with Haryana Police and is getting pension and as such, cannot be treated as dependent on the earnings of the deceased.

On the pleadings of the parties, the following issues were framed by the Trial Court:-

- “1. Whether on 30.01.2014 Harbhajan Singh died on account of sustaining injuries in the accident in question which took place due to rash and negligent driving of offending tipper bearing registration no. HR-37-D/0182 by respondent no.1?OPP.*
- 2. If Issue No.1 is proved, whether the claimants are entitled to any compensation, if so, to what amount and from whom?OPP.*
- 3. Whether respondent no.1 was not holding a valid and effective driving license at the time of accident in question, if*

FAO-4964-2015 (O&M) and connected petition -3-

so, to what effect? OPR-3.

4. *Relief.”*

As regards Issue No.1 findings were returned in favour of the claimants and it was held that death of Harbhajan Singh took place on account of injuries suffered in the accident that took place on 30.1.2014 involving the offending/insured Tipper Truck bearing registration No. HR-37D-0182 and which was being driven in a rash and negligent manner by driver namely Ram Karan.

In so far as quantum of compensation is concerned, Tribunal has assessed the monthly income of the deceased to be Rs.8,000/- per month, awarded an addition in income @ 50% towards future prospects and has applied the multiplier of 14 to the multiplicand. An amount of Rs.25,000/- has been awarded towards loss of consortium and Rs.25,000/- towards funeral expenses. The total compensation amount awarded is Rs.15,62,000/- along with interest @ 7.5% per annum from the date of institution of the claim petition till realization. Tribunal in his award dated 8.5.2015 has apportioned the compensation amount in the following terms:-

- | | | |
|----|---|--------------------|
| 1. | Claimant No.1 (father) | Rs.1,31,000/- |
| 2. | Claimant No.2 (mother) | Rs.1,31,000/- |
| 3. | Claimants No.3 and 4
(two minor daughters) | Rs.6,00,000/- each |
| 4. | Respondent No.4
(Raj Rani widow) | Rs.1,00,000/- |

FAO-5474-2016 has been filed at the hands of the parents and the two minor daughters of the deceased seeking enhancement of compensation.

FAO-4964-2015 has been filed by Raj Rani also claiming enhancement as also modification with regard to apportionment of the

compensation awarded by the Tribunal.

Counsel in FAO-5474-2016 has argued that the Tribunal has assessed the monthly income of the deceased as Rs.8,000/- per month and which is on the lower side. It is urged that the claim set up on behalf of the claimants was that the deceased was earning more than Rs.20,000/- per month by doing the work of welding and in this regard not only Hardy Singh claimant/appellant no.1 had stepped into the witness box as PW-2 but even PW-4 Sadhu Ram, Lambardar had deposed to the same very effect and had supported the assertion with regard to monthly earning of Rs.20,000/- per month by the deceased. Yet another contention raised is that the Tribunal ought to have applied the multiplier of 15 to the multiplicand instead of 14 keeping in view the age of the deceased to be 36 years at the time of his death.

Having heard counsel for the appellants in FAO-5474-2016 and having perused the case paper book, this Court is of the considered view that no case for enhancement of the compensation amount awarded by the Tribunal vide award dated 8.5.2015 is made out.

Even though, the claimants have asserted the deceased to be earning Rs.20,000/- per month, yet, no documentary evidence had been adduced to substantiate such claim. The Tribunal by noting the deposition of appellant no.1 Hardy Singh i.e. father of deceased as also of Sadhu Ram, Lambardar has accepted the version as regards deceased being engaged in the work of welding and as such, being a skilled worker. The date of accident is 30.1.2014 and Hardy Singh died on 4.2.2014. Counsel does not dispute that in relation to such point of time even the minimum wages admissible to a skilled worker were not in excess of

Rs.8,000/- per month. Under such circumstances, the assessment of the monthly income of the deceased as Rs.8,000/- per month by the Tribunal, is affirmed.

This Court, however, finds merit in the contention raised by counsel that keeping in view the age of the deceased to be 36 years at the time of his death, the Tribunal ought to have applied a multiplier of 15 instead of 14 to the multiplicand as per parameters laid down by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77***. However, interference in such regard is being declined for the reason that the Tribunal has awarded an addition in income towards future prospects @ 50%, whereas it ought to have awarded such increase in income @ 40% instead keeping in view the age bracket and the claim of the claimants that the deceased was self employed. No change, as such, is directed as regards multiplier as also towards future prospects.

In view of the discussion above, the prayer set up by the claimants/appellants for enhancement of compensation in FAO-5474-2016 is declined. Furthermore, there is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 332 days in filing the main appeal i.e. FAO-5474-2016. The contents of the application do not disclose and bring forth any justifiable cause for condonation of the inordinate delay. The prayer for condonation of delay of 332 days in filing the main appeal is, as such, rejected. Consequently, FAO-5474-2016, is dismissed on merits as also being time barred.

FAO-4964-2015 is at the hands of the widow Raj Rani seeking enhancement of compensation as also a larger share of the compensation amount already awarded by the Tribunal in the award dated 8.5.2015.

In so far as quantum of compensation is concerned, such prayer is declined in the light of the reasoning adopted by this Court while dismissing FAO-5474-2016 that had been filed by the parents as also two minor daughters of deceased Harbhajan Singh wherein also prayer was for enhancement of compensation.

In so far as apportionment and entitlement of compensation is concerned, counsel for the appellant Raj Rani has vehemently argued that a widow, even if, remarried is entitled to compensation both as a legal representative as well as legal heir of the deceased husband.

There would be no quarrel with the proposition sought to be canvassed by learned counsel. The Tribunal in the award dated 8.5.2015 has accepted the appellant Raj Rani as a legal representative as also legal heir of the deceased husband and has granted in her favour Rs.1 lac as share out of the total compensation amount of Rs.15,62,000/-.

The real issue in the instant appeal filed at the hands of Raj Rani is with regard to apportionment of the compensation amount.

Even in regard thereto, no interference would be warranted.

Counsel for the appellant does not dispute that Raj Rani had remarried immediately after the death of Harbhajan Singh. That apart, even the two minor daughters were left for upkeep and care with her in-laws i.e. aged parents of deceased Harbhajan Singh. It would also be apposite to notice that Raj Rani herself had not filed any claim petition under Section 166 of the Motor Vehicle Act seeking compensation. Rather she had been

impleaded as respondent no.4 in the claim petition that had been filed by the parents and two minor daughters of deceased. Even before the Tribunal the present appellant Raj Rani had not come with clean hands. In the written statement filed before the Tribunal as respondent no.4, she had not even disclosed with regard to the factum of remarriage. Even in her examination-in-chief by way of filing of affidavit Ex. RW-1/1A she claimed that she is entitled for compensation being widow of the deceased and did not disclose that after death of Harbhajan Singh she had remarried. However, it is only in her deposition during cross-examination that she admitted with regard to remarriage and further admitted that during the life time of the deceased, a matrimonial dispute *inter se* the parties was going on and that she was residing separately from her husband whereas her minor children were being taken care of by the husband as also his parents.

By taking notice of such uncontroverted factual position, whereby the two minor daughters have been left by the widow/present appellant at the mercy of the aged grandparents and the appellant having proceeded to her new matrimonial home immediately after the death of Harbhajan Singh, this Court affirms the apportionment granted by the Tribunal of the compensation amount and in terms whereof a sum of Rs.1 lac has been awarded in her favour. Consequently, FAO-4964-2015 is found to be without merit and is dismissed.

In view of the discussion above, FAO-4964-2015 and FAO-5474-2016 are dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

10.08.2018

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No