IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 29.08.2018

FAO No.4768 of 2016 (O&M)

NEW INDIA ASSURANCE COMPANY LTD. ... Appellant

Versus

SMT. VIJAYA AND ORS. ... Respondents

FAO No.6877 of 2016 (O&M)

SMT. VIJAYA AND ORS. ... Appellants

Versus

RAM CHANDER AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate
for the insurance company.

Mr. Sandeep, Advocate for
Mr. Jagjeet Beniwal, Advocate
for the claimants.

Mr. Ravinder Phogat, Advocate
for the driver.

Mr. Indresh Goel, Addl. A.G., Haryana.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4768 and 6877 of 2016 as these have emerged out of the same award dated 31.05.2016 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Dr. Sukh Mahender in a motor vehicular accident that took place on 28.09.2014.

The Tribunal has awarded compensation of Rs.56,95,294/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.84,941/-
2. Addition in income for future prospects	30%
3. Deduction for personal expenses	1/4th
4. Deduction of income tax	Rs.1,98,761/-
5. Deduction for contributory negligence	50%
6. Multiplier	14
7. Loss of dependency	Rs.55,65,294/-
8. Expenses on funeral	Rs.25,000/-
9. Loss of estate	Rs.5000/-
10. Loss of consortium	Rs.1,00,000/-

FAO No.4768 of 2016 has been filed by the insurance company whereas the other appeal has been filed by the claimants seeking enhancement of compensation.

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

Counsel for the claimants has assailed findings of the Tribunal on issue No.1 whereby contributory negligence has been attributed to the deceased and that too to the extent of 50%. It is argued that Ram Chander, driver of the offending vehicle did not appear in the witness box to counter case of the claimants or testimony of Rajeev Kumar PW1, therefore, an adverse inference is liable to be drawn against the respondents. It is further argued that mere fact that accident was head on collision *ipso facto* does not mean that the deceased can be attributed negligence in causing the occurrence.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.1 on the premise that testimony of Rajeev Kumar PW1 is sufficient to attribute negligence to the deceased.

With regard to quantum of compensation assessed by the Tribunal, it is argued that as the deceased was an employee of Haryana Government, family of the deceased shall be entitled to financial assistance under the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') and the said benefit is amenable to deduction in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**.

I have heard counsel for the parties, perused the paper book particularly the award and testimony of Rajeev Kumar, a copy whereof was supplied by counsel for the insurance company and its correctness has been vouched by counsel for the claimants.

Rajeev Kumar PW1 tendered into evidence his affidavit Ex.PW1/A by way of examination in chief. In para 2 of the affidavit, a relevant extract from his testimony reads as follows:-

> *"That on 28.09.2014 at about 7.45 am, the deponent was on morning walk and was watching the plot situated near locality Hunamal Pyau, Bhiwani. He saw that a bus of Faridabad depot bearing registration No.HR-38R-7205 coming from Bhiwani side, which was driven by its driver rashly, negligently and at a very high speed and struck with the motorcycle, which was driven by Dr. Sukh Mahender, who was coming from Ninan side towards Bhiwani. Due to this heavy impact, the motorcyclist fell down on the road and he received fatal and grievous injuries on various part of his body. Immediately after the accident, I with the help of other passerby brought the injured at G.H. Bhiwani for treatment and got admitted him there. This accident has been seen by me."*

The witness was cross examined by counsel representing the respondents before the Tribunal. In his cross examination, he has stated to the following effect:-

> *"There was head on collision between the aforesaid bus and motorcycle. The rider of motorcycle fell down on the road and sustained injuries in the accident."*

A conjoint reading of the aforesaid extract from examination in chief and cross examination of respondent Rajeev Kumar makes it evident that testimony of the witness is silent as to how the bus can be held rash and negligent. He has not even specified the speed at which the bus was driven. It is not the plea of Rajeev Kumar that the motorcycle was driven on correct side of the road and the bus driver took the bus on wrong side and hit the motorcycle driven by the deceased. Taking into consideration the facts elicited in examination in chief and cross examination, there is no escape from conclusion that present is a case of contributory negligence of both the vehicles involved in the occurrence. The bus belongs to Haryana Roadways and driven by Ram Chander. The driver of a heavy vehicle is obligated to take more care and precaution in order to ensure that small vehicles particularly the two wheelers are safe. In the given scenario, contributory negligence attributed to the deceased is reduced to the extent of 40% in place of 50%. Accordingly, findings of the Tribunal on issue No.1 are modified in the aforesaid terms.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has rightly assessed loss of monthly dependency at Rs.84,941/-. The annual dependency comes to Rs.10,19,292/-. After deducting liability to pay income tax (Rs.1,30,787/-), annual loss of dependency is Rs.8,88,505/- (10,19,292 - 1,30,787). Claimants shall be entitled to addition in income for future prospects @ 30% as the deceased was a government employee. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.1,21,28,093/- [Rs.8,88,505 x 14) + (30% future prospects) - (1/4th deduction for personal expenses)].

The deceased was born on 22.01.1971 and unfortunately died on 28.09.2014. He was 43 years and 8 months old at the time occurrence. The family of the deceased shall be entitled to financial assistance under the Rules of 2006 for a period of 12 years as the deceased had not attained the age of 48 years. Total financial assistance available to family of the deceased would be Rs.1,22,31,504/- (Rs.84,941 x 12 x 12). In the light of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017,** only 50% of the amount is amenable to deduction out of compensation assessed. After deducting compassionate assistance (Rs.61,15,752/-), compensation payable to the claimants comes to Rs.60,12,341/- (1,21,28,093 - 61,15,752). The claimants shall be entitled to 60% of compensation assessed and the same comes to Rs.36,07,404/-. In addition, claimants shall be entitled to Rs.70,000/- under conventional heads. Accordingly, compensation allowed by the Tribunal is reduced to the extent of Rs.20,17,890/- (56,95,294 - 36,77,404). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

The appeals are disposed of in the aforesaid terms.

(REKHA MITTAL)
JUDGE

29.08.2018
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No