IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8518-2014 (O&M)
Date of decision: 28.08.2018

NATIONAL INSURANCE CO. LTD ... Appellant

Versus

SUNITA AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Deepak Suri, Advocate and
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for respondents No.1 to 5.

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REKHA MITTAL, J. (Oral)

CM No.23231-CII of 2014

Heard.

Allowed as prayed for. Delay of 121 days in refiling the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 01.02.2014 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of death of Satish Kumar in a motor vehicular accident that took place on 03.08.2012.

The Tribunal has awarded compensation of Rs.36,64,075/-, detailed hereunder:-

1. Annual income of the deceased	Rs.2,65,500/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.36,24,075/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.5000/-
8. Loss of love and affection to minor children	Rs.10,000/-

Counsel for the appellant-insurance company would argue that findings of the Tribunal on issue No.1 are incorrect as the Tribunal has not taken into consideration the facts elicited in cross examination of Zile Singh PW1, examined to discharge onus of issue No.1 by the claimants. It is argued that Zile Singh has admitted in cross examination that the rear vehicle (vehicle driven by the deceased) bearing No.CH-03-H-9596 was at a high speed and got broken into pieces after hitting the alleged offending vehicle, lying parked on the GT road having got broken down. It is further argued that as the vehicle driven by the deceased hit from behind the broken down truck, the present is a case of contributory negligence of both the drivers and accordingly the claimants are not entitled to compensation to the extent of negligence attributable to the deceased.

With regard to quantum of compensation, it is argued that addition in income for future prospects allowed by the Tribunal is liable to be restricted @ 25% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors.,**

2017 SCC 1270.

Counsel representing the claimants has supported findings on issue No.1 and has prayed for enhancement of compensation under conventional heads in the light of aforesaid judgment.

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

Indisputably, the occurrence in question took place when the offending vehicle was standing on the GT road and vehicle driven by the deceased hit against the standing vehicle at about 2.00 am after midnight. No such plea has been raised by the respondents that negligence can also be attributed to the deceased himself as he hit against the standing truck. The driver of the offending vehicle did not appear in the witness box if he had taken adequate precautions in order to pre-warn the commuters on the GT road. Zile Singh admitted in his cross examination that there was no source of light at the spot. There is nothing on record suggestive of the fact that driver of the offending vehicle had used any indicators with regard to the vehicle being left at the GT road because of some mechanical failure. The mere fact that the vehicle driven by Satish Kumar was at a fast speed is not sufficient to attribute negligence to the deceased, in view of the facts elicited in examination in chief and cross examination of Zile Singh. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal on issue No.1 in favour of the claimants and against the respondents before the Tribunal.

With regard to quantum of compensation assessed by the Tribunal, claimants shall be entitled to addition in income for future prospects @ 25%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. However, compensation allowed by the Tribunal under conventional heads is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

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

In view of the above, loss of dependency is calculated at Rs.34,84,687/- [(Rs.2,65,500 x 14) + (25% future prospects) – (1/4th deduction for personal expenses)].

Total compensation is Rs.35,54,687/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,09,388/- (36,64,075 - 35,54,687). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(REKHA MITTAL)
28.08.2018 **JUDGE**
ashok

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