VIKAS CHANDER
2018.12.07 12:01

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 28.11.2018
FAO no.7022 of 2015 (O&M)

M/s Dwarka Dass Khosla Agencies (P) Ltd. ...Appellant

Vs.

Avtar Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Puneet Sharma, Advocate
for the petitioner, as also appellant.
Mr. Neeraj Khanna, Advcoate
for respondent no.2 in both the cases.
Mr. Kushagra Mahajan, Advocate
for respondent nos.1 and 3 to 5 in both the cases.

Amol Rattan Singh, J (Oral)

By this appeal, the appellant-company challenges the Award of the learned Motor Accident Claims Tribunal, Amritsar, dated 29.04.2015, by which the claimant in the claim petition has been awarded a compensation of Rs.6,94,250/-, along with interest running @ 6% per annum on the said amount (from the date of filing of the claim petition till its realization), on account of the unfortunate death of the wife of the claimant in a motor vehicular accident that took place on 12.10.2008.

2. As per the case of the claimant, respondent no.1 herein, along with his wife Hardeep Kaur, were travelling on a scooter bearing registration No.PB-46-C-8543, going towards Sheran Wala Gate, Amritsar at about 11.45 a.m. When they reached near Chita Gurmat, a truck bearing

registration no.PB-08Z-2877 came from behind, from the Ram Bagh side, being driven rashly and negligently by its driver and struck the scooter from behind, with both, the claimant and his wife (who was riding pillion behind him), having fallen down and received injuries, with the front tyre of the truck having run over the head of Hardeep Kaur, who consequently died on the spot.

The driver of the truck is stated to have run away from the spot of the accident, leaving the truck behind.

The truck is not denied to be owned by the appellant company even in the written statement filed by the company (respondent no.2 before the Tribunal).

On the basis of the aforesaid pleadings, the following issues were framed by the Tribunal:-

> "1. Whether Hardip Kaur died due to rash and negligent driving of truck No.PB-08-Z-2877 by its driver on 10.12.2008 in the area of Chitta Gummat, Ram Bagh, Amritsar? OPA
>
> 2. Whether applicant is the legal heir of the deceased? OPA
>
> 3. Whether applicant is entitled for compensation to what extend and from whom? OPA
>
> 4. Whether the driver of the offending vehicle was not holding a valid driving license? OPR2
>
> 5. Relief."

3. Though in the written statement filed in the claim petition by the appellant herein, even the factum of the accident had been denied, the

learned trial court on the basis of the evidence led, eventually found that the accident had taken place with the truck in question and negligence was foisted on the driver of the truck, though he was not impleaded.

The stand of the appellant company before the Tribunal, to the effect that the driver of the truck not having been impleaded, the negligence could not be held to be proved, was rejected essentially on the ground that it is not necessary for the claimant to implead all 'tort-feasers' and therefore the appellant itself not having disclosed the name of its driver, nor having examined him to refute the pleadings and testimony of the claimant, the negligence of the driver of the truck, as testified to by the claimant, could not be refuted.

4. As regards the compensation to be paid to the claimant, it was found by the learned Tribunal that the deceased Hardeep Kaur was running a boutique and had been fling income tax returns, with her annual income shown to be Rs.1,00,000/-, Rs.1,10,000/- and Rs.1,25,000/-, as per the last three returns filed by her.

However, the Tribunal took her income to be Rs.1,10,000/- per annum, it not being denied by any of the parties that the last income tax return was filed after her death. To that amount, 15% was added by way of loss of prospects of an increased income in the future, (the said amount being Rs.16500/- per annum) and consequently, her annual income, including loss of future prospects thereof, was taken to be Rs.1,26,500/-, with the claimant held to be her sole dependent, all her children being married.

50% of her income was deducted by way of personal her expenses had she remained alive. Thereafter, applying a multiplier of '9', the loss of income to the respondent-claimant, was held to be Rs.5,69,250/-, with him also found to be entitled to a sum of Rs.1 lac on account of loss of consortium and Rs.25,000/- on account of the funeral expenses of the deceased.

Thus, the total amount, as already noticed above, came to Rs.6,94,250/- plus interest running @ 6% per annum.

5. Having heard learned counsel and having considered the matter, as regards the negligence in the accident being caused, I see no reason to differ with the findings of the Tribunal, in view of the fact that the ownership of the truck in any case is not denied.

Hence, with the claimant obviously not knowing the name of the driver thereof, it was incumbent upon the appellant to disclose the name of the driver and to even produce him as a witness, in case it wished to refute the testimony of the claimant as an eye witness to the accident.

Though learned counsel for the appellant has submitted that an application under Order 1 Rule 10 CPC was filed by the appellant to implead the driver, that was dismissed on account of the insurance company having opposed it. Yet, I see no reason to interfere with the finding on the question of negligence, because even if the application under Order 1 Rule 10 CPC had been dismissed, that did not preclude the appellant from producing the driver of the vehicle as a witness to controvert the the pleadings and testimony of the claimant, as regards the negligence that caused the accident.

That not having been done and the pleadings and testimony of the claimant having been remained unrebutted, the challenge in this appeal to the finding on that issue is dismissed.

6. Mr. Sharma, learned counsel for the appellant, submits that as regards deduction of 50% of the income of the deceased towards her personal expenses had she remained alive, the respondent-claimant, being her husband, shown to be an able bodied man who in fact was "driving the scooter", cannot be said to be wholly dependent upon her and consequently, it would not be 1/3rd of the income of the deceased that is to be deducted towards her personal expenses as contended by counsel for the respondent claimants, but would in fact be 50% as the Tribunal has rightly done.

7. He further submits that as regards loss of future prospects of an increased income, the deceased admittedly being a self employed person, 56 years of age, therefore in terms of the ratio of the judgment of the Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others,** (2017) 16 SCC 680, 10% of her income is to be added by way of loss of future prospects and not 15% as has been done by the Tribunal.

Also in terms of the ratio of the aforesaid judgment, he submits that the total amount towards loss of consortium, loss of estate and expenses towards the funeral and last rites of the deceased, together cannot exceed Rs.70,000/-, with Rs.40,000/- being payable towards loss of consortium and

Rs.15,000/- each in respect of the other two heads.

8. That contention is found to be correct and therefore, as regards the compensation awarded by the Tribunal, on account of loss of future prospects of an increased income, 10% of her proved income of Rs.1,10,000/- is to be added, i.e. Rs.11,000/- and not Rs.16,500/- as has been done by the Tribunal, and consequently the income of the deceased has to be taken to be Rs.1,21,000/- per annum, 50% of which is to be deducted towards her personal expenses, had she remained alive. Thus, the loss of annual income to the respondent-claimant would come to Rs.60,500/-, to which a multiplier of '9' is to be applied. Hence, the amount would come to Rs.5,44,500/- under that head, with Rs.70,000/- to be added to that, the total compensation therefore coming to Rs.6,14,500/- as against Rs.6,94,250/- awarded by the Tribunal.

Consequently, on the issue of the compensation awarded (issue no.3), the finding of the Tribunal is set aside, with an amount of Rs.6,14,500/- awarded to respondent no.1.

9. As regards the liability of respondent no.2-insurance company, the Tribunal vide the impugned Award not having gone into that aspect in view of the fact that the application under Order 9 Rule 13 CPC had been allowed only qua respondent no.1, and that already having been held by this Court in a revision petition, i.e. CR no.7888 of 2015, to be an order not sustainable (vide an order of even date), the matter has to be remanded on that limited issue to the Tribunal, for evidence to be led by the appellant-petitioner as also the insurance company, on the issue of the liability of the

company to indemnify the appellant-petitioner (or not), i.e. issue no.4.

10. The appeal is thus partly allowed and disposed of in the aforesaid terms, with the Tribunal to now proceed on deciding issue no.4, and depending on the outcome of the adjudication made by it on the said issue, naturally, the second part of issue no.3, pertaining to liability to pay the compensation would also be decided by it.

However, the amount now awarded by this Court to respondent no.1 shall be paid at this stage by the petitioner, along with interest @ 6% per annum running on the said amount (as awarded by the Tribunal), from the date of filing of the claim petition till its realization. This direction is considered to be appropriate because the liability to indemnify or not to indemnify the petitioner, is a matter essentially between two tort-feasors, for which respondent no.1-claimant cannot suffer.

The amount already deposited by the petitioner would be also released immediately to respondent no.1, to be, naturally, deducted from the total amount now to ordered to be paid by the petitioner to respondent no.1.

Needless to say, if the petitioner is successful in leading evidence before the Tribunal to show that the respondent-insurance company is indeed liable to indemnify it (petitioner) the entire compensation would be reimbursed to the petitioner, along with interest thereupon, by the insurance company, with the Tribunal requested to dispose of the matter within a period of 6 months.

28.11.2018 **(Amol Rattan Singh)**
vcgarg/dinesh **Judge**

Whether speaking/reasoned : Yes
Whether reportable : Yes