

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6370 of 2016 (O&M)

Date of Decision: 30.04.2018

Rekha and others

.....Appellants

Vs.

Subhash and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Arun Luthra, Advocate, for
Mr.Dhruv Gupta, Advocate, for the appellants.

Mr.Ram Kumar Saini, Advocate, for respondents No.1 and 2.

Mr.Vinod Gupta, Advocate, for respondent/Insurance Co.

RITU BAHRI, J. (ORAL)

CM No.21287-CII of 2016

For the reasons stated in the application, delay of 289 days in filing the appeal is condoned.

Application stands disposed of.

Main Case

Present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 06.08.2015, passed by the learned Motor Accident Claims Tribunal, Sonipat (for short, 'the Tribunal') vide which compensation to the tune of Rs.18,61,000/- was awarded to the claimants on account of death of Ranbir son of Om Parkash.

FACTS NOT IN DISPUTE

On 07.05.2014, one Suresh son of Balbir alongwith Ranbir son of Om Parkash were coming to village Kheri Damkan by unloading tractor trolley of fodder at Arya Nagar, Gohana and at about 1:30 p.m. when they reached near water tank of Gohana-Panipat bypass, in the meantime, the offending car bearing No.HR-11F-2869, being driven by respondent No.1 rashly and negligently, came from back side and struck against the trolley from the right side and a heavy jerk was noticed by tractor and the car by

getting round struck against the right wheel of the said tractor, and due to the said jerk/jump, the driver of said tractor, namely, Ranbir fell down on the road and sustained injuries on his head and the car by turning turtle struck with the divider. The driver of the offending vehicle fled from the spot. Suresh shifted injured Ranbir to PGIMS Khanpur Kalan, however due to his serious condition he was referred to PGIMS Rohtak but he was got admitted in Sun Flag Hospital at Rohtak and deceased could not get consciousness till the registration f FIR. An FIR N.105 dated 08.05.2014 under Section 279/337 IPC was lodged with P.S.City, Gohana against respondent No.1.

COMPENSATION ASSESSED BY MACT

The Tribunal held that the deceased was 32 years old and the claimants produce on the record that the deceased was having licence to drive tractor and it can safely be assumed that deceased was skilled driver and was engaged in agricultural pursuits by taking lands of various persons on lease. The factum of accident had been proved and the offending vehicle was insured with respondent No.3-Insurance Company.

Sr.No.	Heads of compensation	Amount
1	Salary per month	Rs.12,000/-
2.	Deduction 1/3rd	Rs.12,000/- ---Rs.4,000/-= Rs.8,000/-
3.	Annual loss of dependency after applying the multiplier	Rs.8,000/- X 12 X 16= Rs.15,36,000/-
4.	Loss of lover and affection	Rs.1,00,000/-
5.	Loss of consortium	Rs.1,00,000/-
6.	Loss of estate	Rs.1,00,000/-
4.	Funeral expenses and others expenses.	Rs.25,000/-
	Total	Rs.18,61,000/-

Learned counsel for the claimant-appellant contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced, in view of the judgment "**National Insurance Company Ltd. Vs. Pranay Sethi and others SLP(C) 25590 of 2014 decided on 31.10.2017..** On the other hand, the learned counsel for the respondents have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

Learned counsel for the respondent/Insurance Company submits that the income has been taken by the learned Tribunal for assessing the compensation is on the higher side.

I have heard learned counsel for the parties and perused the record. A perusal of the Award shows that the witnesses i.e. Kulbir Singh (PW4) and Om Parkash (PW5) stated in their cross-examinations that it was common knowledge that in rural hinterland no writing/agreement was generally done while taking land on yearly lease basis. The copies of receipts Ex.P13 to Ex.P47, Ex.P52 and Ex.P53 lend some credence to the assertions of petitioners regarding engagement of deceased in agricultural pursuits. Further it can safely be assumed that deceased was skilled driver and was engaged in agricultural pursuits by taking lands of various persons on lease. So, no modification is required with regard to the income as it is not on the higher side.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. Following the ratio of law laid down by Hon'ble the Supreme Court in the above mentioned judgments, the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Salary per month	Rs.12,000/-
2.	Future prospect 40%	Rs.12,000/- + Rs.4800/-= Rs.16,800/-
2.	Deduction 1/3rd	Rs.16,800/- ---Rs.5,600/-= Rs.11,200/-
3.	Annual loss of dependency after applying the multiplier	Rs.11,200/- X 12 X 16= Rs.21,50,400/-
4.	Conventional heads	Rs.70,000/-
	Total	Rs.22,20,400/-
	Difference on the enhanced amount	Rs.22,20,400/- ---- Rs.18,61,000/-= Rs.3,59,400/-

Resultantly, the enhanced amount of compensation of Rs.3,59,400/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim

petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. And ors. in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent.

(RITU BAHRI)
JUDGE

30.04.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No