In the High Court of Punjab and Haryana at Chandigarh

FAO- 9970 of 2014(O&M)
Date of Decision: 6.3.2018

Baby Anjali and another

---Appellants

versus

Baljeet Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vinod K.Kanwal, Advocate
for Mr. Ashit Malik, Advocate
for the appellants

Mr. Rajesh Bansal, Advocate,
for the insurance company

***

<u>Rekha Mittal, J.</u>

Claimants are in appeal seeking enhancement of compensation on account of death of Sharwan Singh in a motor vehicular accident that took place on 3.7.2013.

Respondent No. 2 has already been served but remains unrepresented. Though the insurance company has been given recovery right against the driver and owner of the vehicle but as the insurance company cannot claim recovery right against the driver for the reasons to be discussed in later part of the judgment, service of respondent No.1 is dispensed with.

The Motor Accidents Claims Tribunal, Sonepat (in short "the Tribunal") has awarded compensation of Rs. 6,89,936/-, detailed hereunder:-

Monthly income of the deceased	Rs. 5000/-
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	Rs. 6,39,936/-
Funeral and transportation expenses	Rs. 10,000/-
Loss of estate	Rs. 20,000/-
Loss of consortium	Rs. 20,000/-

Counsel for the appellants would argue that compensation awarded by the Tribunal needs to be enhanced by allowing benefit of increase in income for future prospects and adequate compensation under conventional heads in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**.

Counsel representing the insurance company has supported assessment made by the Tribunal. It is argued that as the claimants failed to adduce satisfactory evidence on record that the deceased was a skilled worker, there is no scope for enhancement of income of the deceased. It has further been argued that in case compensation is enhanced, other terms and conditions of the award giving recovery right in favour of the insurer against the driver and owner of the vehicle (respondent Nos. 1 and 2 therein) may be kept intact.

The occurrence in question took place on 4.7.2013 when the deceased was driving a canter and the alleged offending vehicle bearing No. DL-1LK-3949 was lying parked on the G.T.Road without any indicators/reflectors etc. The mere fact that the deceased was driving the canter that met with an accident is sufficient to support plea of the claimants that the deceased was a skilled worker being driver of the goods vehicle. Taking a clue from the notification issued by the State of Haryana fixing minimum wage of various categories of employees, income of the deceased is assessed at Rs. 5700/- per month. Deduction and multiplier adopted by the Tribunal are affirmed. The claimants shall be entitled to increase in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs. 5700 x 12 x 16 = 10,94,400 + 4,37,760(40%) =15,32, 160 – 5,10,720 (1/3rd)=Rs. 10,21,440/-.

Under conventional heads, claimants are entitled to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra),** detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation is **Rs. 10,91,440/-** and the additional amount is **Rs.4,01,504/-**(10,91,440-6,89,936), payable with interest @ 7.5% per annum from the date of petition till realization to Baby Anjali minor except Rs. 40,000/- paid towards consortium to Sita Devi claimant No. 2. The amount falling to share of the minor shall be invested in fixed deposit for a period of three years or till she attains the age of majority, whichever is later. The interest accruing on the FDR shall be paid to guardian of the minor for meeting expenses on her education and living.

The Tribunal has given recovery right in favour of the insurance company for want of valid route permit and fitness certificate. Driver of the vehicle has no obligation in law to ensure that the vehicle is plied with a valid route permit/fitness certificate. This apart, there is no privity of contract between the insurer and the driver, therefore, there is no question of the driver being guilty of violating the terms and conditions of the contract of insurance and creating a right with the insurer to press for recovery. Under the circumstances, findings of the Tribunal giving recovery right against driver of the offending vehicle cannot be allowed to sustain and ordered to be set aside.

For the foregoing reasons, appeal filed by the claimants is partly allowed in the aforesaid terms. Recovery right given to the insurer against driver of the offending vehicle is set aside.

Before parting with this order, it is pertinent to mention that disposal of the appeal filed by the claimants would not cause prejudice to rights of the insured in case he prefers an appeal challenging award of the Tribunal giving recovery right in favour of the insurer.

(Rekha Mittal)
Judge

6.3.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No