In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2384 of 2018(O&M)
Date of Decision:2.5.2018

Magna HDI General Insurance Company Limited

---Appellant

vs.

Bagicha Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr.Pankaj Mehta, Advocate
for the appellant

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

The present appeal directs challenge against award dated 26.2.2018 passed by the Motor Accidents Claims Tribunal, Amritsar (in short “the Tribunal”) whereby compensation has been awarded on account of death of Angrej Singh in a motor vehicular accident that took place on 24.5.2016 but the injured passed away on 26.5.2016.

Counsel for the insurance company has assailed findings of the Tribunal on issue No. 1 by contending that in the first information report lodged at the behest of Gurmeet Singh PW2, registration particulars of the vehicle in question have not been given. Till date, the police has not presented the challan against Bagicha Singh, alleged driver and owner of the vehicle in question as stated by ASI Harjinder Singh RW1 examined on 9.11.2017. Gurmeet Singh in his cross examination has stated that he was informed by the police that Bagicha Singh was driving tractor trolly, therefore, testimony of Gurmeet Singh is not sufficient to prove that accident took place because of rash and negligent driving of alleged offending vehicle.

To assail quantum of compensation assessed by the Tribunal, the sole submission made by counsel is that the Tribunal has allowed deduction for personal expenses to the tune of 1/4th but the same should be 1/3rd as application for compensation has been filed by the widow and two minor children of the deceased. It is argued that the Tribunal despite referring to judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3)RCR (Civil) 77** has still committed an error by allowing deduction of 1/4th viz-a-viz 1/3rd available in the given circumstances.

So far as plea of the insurance company to assail findings of the Tribunal on issue No.1 with regard to involvement of the offending vehicle in the occurrence and accident being the result of rash and negligent driving of the said vehicle by Bagicha Singh respondent No. 1, the same is not meritorious and liable to be rejected. The mere fact that Gurmeet Singh PW2 was informed about name of the driver by the police is of no consequence to discard or disbelieve his testimony that accident was caused due to rash and negligent driving of the offending vehicle by its driver. This apart, perusal of testimony of ASI Harjinder Singh RW1 would reveal that during investigation, the vehicle in question was taken in custody, Bagicha Singh was arrested on 27.5.2016 and released on bail. Challan has not been presented as some enquiry appears to be pending before the investigating agency. In the given scenario, I find it difficult to accept contention of the appellant that findings recorded by the Tribunal on issue No. 1 suffer from an error much less perversity warranting intervention. As a consequence, findings recorded by the Tribunal on issue

No. 1 are liable to be affirmed and ordered accordingly.

This brings the court to quantum of compensation assessed by the Tribunal The application for compensation was filed by the widow and two minor children of the deceased. As has been rightly argued by counsel for the insurance company, admissible deduction for personal expenses would be 1/3rd. The Tribunal has not assigned any reason for deviating from the formula laid down by Hon'ble the Supreme Court in **Smt. Sarla Verma and others' case (supra).** Accordingly, loss of dependency shall be computed by allowing deduction of 1/3rd for personal expenses. In this manner, loss of dependency comes to Rs.13,61,920/- [7600 x12 x 16=14,59,200 + 5,83,680 (40%)=20,42,880 -6,80,960(1/3rd)].

Medical and other expenses allowed by the Tribunal are affirmed.

Total compensation is Rs. 14,87,520/-(13,61,920 + 1,25,600). Compensation awarded by the Tribunal is reduced to the extent of Rs. 2,65,240/-(17,52,760-14,87,520).

For the foregoing reasons, appeal filed by the insurance company is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the respondents-claimants. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

(Rekha Mittal)
Judge

2.5.2018
paramjit

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