IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3654-2018 (O&M)
Date of Decision: 05.07.2018

IFFCO Tokio General Insurance Company Ltd. --Appellant

Versus

Kuldeep Kaur & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashwani Talwar, Advocate for the appellant.

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TEJINDER SINGH DHINDSA.J (Oral)

Appellant-Insurance Company has filed the instant appeal assailing the award dated 19.12.2017 passed by the Motor Accident Claims Tribunal, Patiala and whereby claimants (respondents no.1 to 3 herein) have been awarded a compensation of Rs.23,27,848/-

Brief facts may be noticed at the outset. Claimants Kuldeep Kaur, Kashmir Singh and Amrik Kaur filed a claim petition under Section 166 of Motor Vehicle Act for grant of compensation in their favour on account of death of Jaskaran Singh in a road accident on 8.11.2016. Claimants were the widow and parents of the deceased. Case set up was that on 8.11.2016 Jaskaran Singh (since deceased) along with his brother Jaspal Singh and brother-in-law Balbir Singh were going towards Village Ajimgarh. Jaskaran Singh was riding a motorcycle bearing registration no. PB-11AQ-3826 while Jaspal Singh and Balbir Singh were following him. At about 2.00 PM when they reached near St. Lawrence School, Ajimgarh, Samana, a truck-trala bearing registration no. HR-64-7994 being driven in a rash and negligent manner, came from Samana side and struck against the motorcycle of Jaskaran Singh. As a result Jaskaran Singh fell down and the truck-trala ran over the head of Jaskaran Singh and who died on the spot.

FIR in this case was registered on 8.11.2016 itself.

Respondent no.1 i.e. owner-cum-driver of the offending vehicle as also the Insurance Company i.e. respondent no.2 in the claim petition filed separate written statements denying each and every averment of the claim petition.

From the pleadings of the parties, following issues were framed by the learned Tribunal:-

> *"1. Whether claimants are the legal representatives of deceased Jaskaran Singh and they remained dependent upon that deceased during his life time?OPC*
>
> *2. Whether Jaskaran Singh had died in road accident, so caused on 8.11.2016 due to rash and negligent driving of Tralla bearing registration no. HR-64-7994 by respondent no.1?OPP*
>
> *3. Whether the claimants are entitled to any sort of compensation? If yes, how much and from whom?OPP*
>
> *4. Whether respondent no.1 Nirmal Singh was not holding valid and effective driving licence at the time of accident?OPR*
>
> *5. Whether offending Tralla was not having valid registration certificate, route permit and fitness certificate, if so its effect? OPR*
>
> *6. Relief."*

Tribunal has returned findings in favour of the claimants and has awarded compensation amounting to Rs.23,27,848/- and which was directed to be apportioned in equal shares between the claimants except for an amount of Rs.40,000/- which was payable to the widow/claimant no.1 on account of loss of consortium. Claimants were also held entitled to recover amount of compensation along with interest @ 7% per annum from the date of filing of the claim petition till realization.

Counsel representing the appellant-Insurance Company has assailed the finding of the Tribunal on Issue no.1 as regards accident having taken place and Jaskaran Singh having died on account of rash and negligent driving of the offending vehicle bearing registration no. HR-64-7994. In this regard, it is contended that the testimony of Jaspal Singh, the real brother of the deceased and the sole eye witness introduced by the claimants was not consistent as on the one hand he has stated that he was following Jaskaran Singh (since deceased) and as such, had seen the accident taking place, whereas in his cross-examination he has stated that he had received a phone call regarding the accident. It is argued that under such circumstances the liability under Section 166 of the Motor Vehicle Act cannot be fastened upon the appellant-Insurance Company. Submission has also been advanced with regard to quantum of compensation stating the same to be highly excessive. It is contended that since no cogent evidence had been adduced with regard to the income of the deceased, the Tribunal ought to have taken the minimum wages applicable at the relevant time and which were Rs.7458.56 rounded of to Rs.7500/- per month. Yet another submission advanced is that the Tribunal has taken the age of the deceased as 23 years, whereas claimant no.1 Kuldeep Kaur, his widow disclosed her age as 29 years. As per learned counsel this in itself would cast a doubt as regards the real age of the deceased and as such, the multiplier that should have been taken was 17 rather than 18 as taken by the Tribunal.

Having heard counsel for the appellant at length, this Court is of the considered view that instant appeal is without merit and deserves to be dismissed.

The accident is stated to have occurred on 8.11.2016. FIR in the case was registered on the same very day. Brother of the deceased i.e. Jaspal Singh came on record through an affidavit that he had actually witnessed the accident and the FIR had been registered for causing accident while driving Tralla bearing registration no. HR-64-7994 in a rash and negligent manner. Name of owner-cum-driver of the offending vehicle was nominated during investigation of the case i.e. FIR (Ex.C-1). Claimants had also placed on record copy of the final investigation report under Section 173 Cr.P.C as Ex.C-3. It has gone uncontroverted that no evidence had been led by the appellant-Insurance Company before the Tribunal.

In the considered view of this Court the award of a claim under the Motor Vehicles Act is based on welfare legislation and proceedings under Section 166 of the Motor Vehicles Act are summary in nature and only preponderance of evidence is required while awarding compensation in favour of the claimants. Pendency of a criminal case against the driver of the offending vehicle is sufficient to arrive at a conclusion that the driver of the offending vehicle was rash and negligent in causing the accident. In view of the above, the contention and submissions raised by counsel representing the appellant-Insurance Company as regards insufficiency of evidence pertaining to involvement of the offending vehicle i.e. Truck-Tralla bearing registration no. HR-64-7994 leading to the accident resulting in death of Jaskaran Singh, is rejected.

As regards quantum of compensation, the claimants had pleaded that Jaskaran Singh (since deceased) was earning Rs.27,000/- per month from the business of dairy farming and by working as Security Guard at M/s P.K. Rice Mill, Rajla, Tehsil Samana, District Patiala. Since no evidence was adduced as regards Jaskaran Singh (deceased) earning money from dairy farming, the same was discarded by the Tribunal. However, the evidence as regards the deceased doing work as Security Guard was duly appreciated inasmuch as CW Sunil Kumar, Accountant of M/s P.K. Rice Mill deposed that Jaskaran Singh was drawing Rs.11,200/- per month while doing the job of Security Guard and had also placed on record computerized copy of statement of account of Jaskaran Singh as EX. CA to show that he was drawing salary of Rs.11,200/- per month at the time of his death. It is such income that has rightfully been taken into reckoning by the Tribunal while awarding compensation. Furthermore, the age of Jaskaran Singh at the time of his death was disclosed as 23 years by claimant Kuldeep Kaur i.e. his widow. Similar age was even mentioned in the copy of the Post Mortem Report brought on record. Accordingly, Tribunal has not erred in taking age of Jaskaran Singh (deceased) as 23 years at the time of his death. The Tribunal has imposed a cut of 1/3rd from the monthly income in the light of the three legal representatives of deceased Jaskaran Singh and by considering age of deceased as 23 years the multiplier of 18 has been applied. Such view is in consonance with the guidelines furnished by Supreme Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) R.C.R (Civil), 77***.

Furthermore, as per dictum laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009*** addition of 40% of the fixed income towards future prospects, has been allowed. Claimants have been awarded amount of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and the widow i.e. claimant no.1 has been granted amount of Rs.40,000/- towards loss of consortium. The amounts so awarded under various heads are as per guidelines furnished in ***Pranay Sethi's*** case (supra).

This Court is of the considered view that the compensation amount awarded by the Tribunal cannot be construed as excessive. Rather the same is well founded and as per dictum laid down by Supreme Court.

There is no merit in the present appeal and the same is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

05.07.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No