IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4743-2018 (O&M)
Date of Decision: 03.08.2018

Sudhir Kumar --Appellant

Versus

Satya Devi & another --Respondents

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

Present:- Mr. Sanjeev Duggal, Advocate for the appellant.

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TEJINDER SINGH DHINDSA.J (Oral)

A claim petition under Section 166 of the Motor Vehicle Act, 1988 came to be dealt with by the M.A.C.T, Jalandhar and vide award dated 4.5.2018, a compensation amount of Rs.23,45,000/- was awarded in favour of claimant no.1 namely Satya Devi on account of death of her son Dharam Pal in a motor vehicle accident that took place on 23.12.2016 involving a Tata-407 vehicle bearing registration no. PB-09A-9179.

The owner-cum-driver of the offending vehicle has filed the instant appeal assailing the award dated 4.5.2018.

Briefly it may be noticed that the claim petition was filed by the mother and sister of Dharam Pal (since deceased) seeking compensation to the tune of Rs.50 lacs on account of his death in a motor vehicle accident that took place on 23.12.2016. Claimants asserted that on the fateful day deceased was proceeding on a motorcycle towards Phagwara and his brother-in-law Sanjiv Kumar Joshi was following him on a separate motorcycle. At about 10.15 A.M when they reached near Adda Darvesh Pind, Tehsil Phagwara, a Tata-407 vehicle green in colour bearing registration no. PB-09A-9179 came from the opposite side being driven at a very high speed and in a rash and negligent manner and the offending vehicle came on the wrong side of the road and struck into the motorcycle of the deceased. As a result Dharam Pal sustained fatal injuries. Claimants asserted that deceased was the sole bread earner of the family and both the claimants were dependent upon him. Dharam Pal was stated to be earning Rs.30,000/- per month by doing electric work. He was stated to be a bachelor.

Claim petition was contested by respondent no.1 (appellant herein) denying the accident itself. The vehicle in question was concededly not insured with any insurance company.

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

> *"1. Whether Dharam Pal son of late Shri Baldev Krishan has died in a road side accident due to rash and negligent driving of vehicle Tata 407 bearing registration no. PB09-A-9179 being driven by respondent Sudhir Kumar?OPP*
>
> *2. If Issue No.1 is proved, then to what amount of compensation, the claimants are entitled on account of death of Dharam Pal son of late Shri Baldev Krishan and from whom?OPP*
>
> *3. Whether the present petition is not maintainable?OPR*
>
> *4. Relief."*

In so far as Issue No.1 is concerned findings have been recorded by the Tribunal that death of Dharam Pal occurred on account of injuries having suffered in the accident that took place on 23.12.2016 involving the offending vehicle bearing registration no. PB-09A-9179 and which was being driven in a rash and negligent manner by respondent no.1 Sudhir Kumar (present appellant).

The total compensation amount computed by the Tribunal is Rs.23,45,000/- in favour of claimant no.1 i.e. mother of the deceased along with interest @ 8% per annum from the date of filing of the claim petition till realization. No compensation amount has been awarded in favour of claimant no.2 by holding that she was a married sister of the deceased and as such, not dependent upon him.

Learned counsel representing the appellant has primarily raised submissions with regard to quantum of compensation. In this regard it is contended that the Tribunal has erred in relying upon the income tax returns of the deceased at Ex. A-1 to Ex. A-3 as these three returns pertained to the Assessment Years 2014-2015, 2015-2016 and 2016-2017 but all three have been filed in one year. Counsel submits that income tax return for the Assessment Year 2014-2015 was filed on 4.2.2016, for Assessment Year 2015-2016 was filed on 28.3.2016 and the income tax returns for Assessment Year 2016-2017 was filed on 3.12.2016. It is urged that even though there was no legal bar for filing three income tax returns in question in one year but since PAN Card had been issued to the deceased in the year 2013, filing of three income tax returns in the year 2016 would be a suspicious circumstance and the Tribunal ought to have presumed that such income tax returns had been filed just with a motive to grab compensation amount. Counsel submits that the income tax returns were self created documents and under such circumstance while assessing the monthly income, the Tribunal should have taken the minimum wages admissible. A feeble attempt has been made by counsel with regard to false involvement of the offending vehicle. Counsel submits that the fatal accident had actually occurred as the motorcycle of the deceased had dashed against a calf who had suddenly come in the centre of the road. Further contended that material evidence in the shape of one C.D has been ignored by the

Tribunal and the contents thereof would otherwise reveal that the appellant had no role whatsoever in the accident.

Having heard counsel for the appellant at length and having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

The accident is stated to have been witnessed by brother-in-law of the deceased Sanjiv Kumar Joshi. Accident took place on 23.12.2016. FIR No.172 dated 23.12.2016 under sections 304-A, 279, 427 I.P.C was registered without any delay on the statement of the eye witness. Counsel does not dispute the fact that in pursuance to registration of the FIR, appellant is facing trial in the court of learned J.M.I.C., Phagwara on the charge of having caused death of Dharam Pal on account of rash and negligent driving of the offending vehicle. In so far as the C.D is concerned, the Tribunal has rightfully taken the view that the same was not admissible in evidence as the certificate Ex. DW-2/A alleged to be issued by RW-2 Bhupesh Gupta did not fulfill the requirements of Section 65-B of the Evidence Act. Even otherwise, the Tribunal has observed that when the C.D was played in the court it did not reveal that the deceased had struck against a calf, rather the C.D only revealed that a dead body was lying on the road and some people had collected at the spot.

In view of the discussion herein above, the challenge laid by counsel to the findings recorded by the Tribunal on Issue No.1, is rejected.

As regards quantum of compensation, the Tribunal has relied upon the income tax returns filed by the deceased for the Assessment Year 2016-2017, wherein gross income was reflected as Rs.2,65,800/- and thereby has assessed the monthly income to be Rs.22,000/-. The contention raised by counsel with regard to the three income tax returns having been filed in one year and thereby being self created documents to grab compensation, is ill founded. The date of accident is 23.12.2016. All the three returns for the Assessment Years 2014-2015, 2015-2016 and 2016-2017 were filed prior to the date of accident i.e. on 4.2.2016, 28.3.2016 and 3.12.2016. The submission raised by counsel in such regard has to be viewed as preposterous. By no stretch of imagination could the deceased have filed the three returns in question in the year 2016 on a prediction that he would be involved in an accident later in point of time i.e. on 23.12.2016.

Having assessed the monthly income of the deceased as Rs.22,000/-, the Tribunal has resorted to a deduction of 50% towards personal and living expenses as deceased was concededly a bachelor. By taking the age of the deceased to be 41 years as on the date of accident, a multiplier of 14 has been applied to the multiplicand. Since it was the case of the claimants themselves that deceased was self employed, an addition in income @ 25% towards future prospects has been awarded keeping in view his age bracket. A sum of Rs.35,000/- in all has been awarded under the conventional heads.

This Court finds that the compensation amount awarded in favour of the aged mother of the deceased is as per parameters/guidelines furnished by the Apex Court in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation & another, 2009 (3) R.C.R (Civil), 77*** and ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil), 1009.***

No intervention in the matter is called for.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

03.08.2018
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No