IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.8571 of 2017 (O&M)
Date of decision:04.10.2018.

The New India Assurance Co. Ltd.

...Appellant

Versus

Rajbir and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Sidhu, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for respondents No.1 & 2.

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LISA GILL, J.

This appeal has been filed by the Insurance Company challenging award dated 04.10.2017 passed by Motor Accident Claims Tribunal, Kaithal.

Brief facts necessary for adjudication of the case are that claimants/respondents No.1 and 2 filed a petition under Section 166 of Motor Vehicles Act, seeking compensation on account of death of their brother Satbir in a motor vehicle accident which took place on 26.11.2016. It was pleaded that Satbir (deceased) along with Raj Kumar, PW2 and others was doing labour work in `Maa Bhagwati Rice Mills, Cheeka'. The offending truck bearing No.HR39A8162 loaded with paddy bags arrived at the said Rice Mill. The offending truck was driven by respondent No.1. At about 6.30 am, respondent No.1 drove the truck without the help of conductor and without any indication, he suddenly reversed the said truck, hit the stack of paddy bags from backside. The deceased was sandwiched between the back of the truck and stack of paddy bags. When the deceased shouted in pain, Raj Kumar raised alarm and on hearing the same, respondent No.1 moved the offending truck forward. Deceased was having difficulty in breathing as his chest was crushed. Respondent No.1 fled from the spot. Raj Kumar and others took the deceased to Mahabir Dal Hospital, Cheeka where deceased was declared dead. FIR No.211 dated 21.11.2016 was registered under Sections 279 and 304-A IPC at Police Station Guhla against respondent No.1. Post-mortem on the dead body of the deceased was conducted. It was claimed that Satbir was 25 years old at the time of accident. He was a labourer, earning Rs.10,000/- per month. Claimants/respondents No.1 and 2 i.e. unmarried brother and sister of the deceased claimed to be dependent upon Satbir. Compensation was, thus, prayed for.

The learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. Learned Tribunal held the age of the deceased to be 25 years at the time of his death and assessed his income as Rs.8100/- per month, considering him an unskilled labourer. 50% increment in income was afforded on account of future prospects. Thus, total income of the deceased was assessed as Rs.12,150/- per month. Deduction of 50% was effected towards the personal expenses. After applying a multiplier of 18, total dependency was assessed at Rs.13,12,200/-. A sum of Rs. 1,00,000/- each was awarded towards loss of estate, loss of life expectancy of the deceased and loss of love and affection. Another sum of Rs.25,000/- was afforded towards funeral expenses. Thus, claimants were held entitled to a total compensation of Rs.16,37,200/- along with interest @ 9% per annum from the date of filing of claim petition till realisation.

Aggrieved therefrom present appeal has been filed by the Insurance Company.

It is submitted that the claimants/respondents are the elder brother and younger sister of the deceased namely Satbir. It is not proved on record that they were dependent upon the deceased. Claimant/respondent No.1, it is submitted that, was elder to the deceased. Respondent No.1 Rajbir while deposing before the learned Tribunal as PW1 has specifically admitted that he was living independently having an income about Rs.4000-5000 per month. He produced his ration card. Moreover, the learned Tribunal has afforded compensation beyond just and reasonable compensation in view of the guidelines made by Hon'ble Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009. It is, thus, prayed that this appeal be allowed and impugned award be modified. Liability of the Insurance Company has not been challenged.

Learned counsel for the claimants/respondents No.1 and 2 while refuting the above said arguments submits that both the said respondents are entitled to compensation being the legal representatives of the deceased. Respondent No.2, it is stated, is the unmarried sister of the deceased. Parents of respondents No.1 and 2 as well as deceased had passed away earlier. Prayer is for maintaining the impugned award.

I have heard learned counsel for the parties and have gone through the certified copies of the record produced in Court today.

PW1 Rajbir, respondent No.1 has specifically admitted that he was earning himself Rs.4000-5000/- per month independently. The deceased had started residing at Cheeka since 4-5 months prior to his death. A perusal of his testimony indeed reveals that respondent No.1 was not dependent upon the deceased who was admittedly his younger brother. However, it cannot be disputed that legal representatives of the deceased are entitled to file a petition under Section 166 of the Motor Vehicles Act. Respondent No.1 is admittedly one of the legal representatives of the deceased while he is not entitled and is undoubtedly entitled to loss of estate as well as loss of consortium in terms of judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018.

In respect to respondent No.2, it is noticed that she is the unmarried sister of the deceased aged nearly 22 years. Parents of respondents No.1 and 2 and deceased had admittedly passed away earlier. Thus, respondent No.2 was totally dependent upon her elder brother. It is a matter of record that she has no independent source of income. Therefore, respondent No.2 is undoubtedly entitled to compensation including loss of dependency. There is no dispute about the income of the deceased assessed at Rs.8100/- per month who was 25 years old at the time of death. Therefore, multiplier of 18 has correctly been applied. However, increment on account of future prospects has to be afforded at the rate of 40% instead of 50%. Respondents No.1 and 2 are entitled to Rs.15,000/- each for the loss of estate and funeral expenses instead of Rs.25,000/- already afforded towards funeral expenses and Rs.1,00,000/- towards loss of estate.

In view of judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018, claimants/respondents No.1 and 2 are entitled to Rs.40,000/- each for loss of consortium.

Compensation on account of death of Satbir is re-worked as under:-

Sr.No.	Heads of Claim	
1.	Income	8100 p.m. i.e., 97,200/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	97,200+38,880 (97,200x40%) = 1,36,080/-
3.	Income after deduction of 50% on account of personal expenses	1,36,080–68,040 (1,36,080/2) = 68,040/-
4.	Total dependency after applying a multiplier of 18	(68,040 **x**18) =12,24,720/-
5.	Loss of estate	15,000/-
6.	Loss of funeral	15,000/-
7.	Loss of filial consortium to claimants/Respondents No. 1 & 2 @ Rs.40000/- each	80,000/- each
	Grand Total	13,34,720/-

Claimant/respondent No.1 is entitled to loss of consortium and fifty percent of loss of estate and funeral expenses. Respondent No.2 is entitled to the rest of compensation. Total compensation of Rs.13,34,720/- instead of Rs.16,37,200/- along with interest @ 9% per annum from the date of filing of the petition till realization is thus awarded.

Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the award dated 04.10.2017, present appeal is disposed of.

(LISA GILL)
JUDGE

October 04, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No