IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.6595 of 2018(O&M)
Date of Decision: 22.10.2018

National Insurance Company Limited, Chandigarh

.......Appellant

Versus

Meenakshi and others

........Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Ms. Swatantar Kapoor, Advocate for the appellant.

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TEJINDER SINGH DHINDSA J.

Appellant-Insurance company has filed the instant appeal assailing award dated 12.07.2018, passed by the Motor Accident Claims Tribunal, Panipat and in terms of which a compensation amount of Rs.32,03,200/- alongwith interest @ 7.5% per annum was awarded in favour of the claimants/respondents No. 1 to 4 herein.

Briefly, it may noticed that a petition under Section 166 of the Motor Vehicles Act 1988, was filed seeking compensation of an amount of Rs.30,00,000/- on account of death of Deepak @ Deepak Tyagi in a motor vehicle accident that took place on 24.02.2016. Claimants were the widow, two minor children and mother of Deepak (since deceased). In the claim petition, it was averred that on 24.02.2016 Deepak was going to his village on a motorcycle and his cousin Surender Tyagi was following him on a separate motorcycle. At about 10 P.M., near Sushma Filling Station, a Bolero vehicle bearing Registration No. HR-06-AA-3453, which was being driven by Dinesh Kumar, in a rash and negligent manner hit the motorcycle being driven by deceased and as a result of which he fell down and sustained multiple grievous injuries. Deepak was shifted to a hospital in Panipat and thereafter taken to Jaipur Golden Hospital, Delhi and succumbed to his injuries on 25.02.2016, during treatment. FIR No.72 dated 25.02.2016, was registered at police station Sadar, Panipat, on the statement of Surender Tyagi. Claimants asserted that Deepak at the time of his death was 33 years old and was a Transporter and running a transport company by the name of M/s Jai Shri Bala Ji Tempo Transport, Sector 25, HUDA, Panipat. His monthly income was claimed to be Rs.50,000/-. A sum of Rs.5,00,000/- was claimed to have been spent on treatment, transportation and last rites. Total compensation amount claimed was Rs.30,00,000/-.

Claim petition was contested by the driver and owner of the offending vehicle by filing a joint written statement. The accident was denied. In the alternative it was pleaded that if the Tribunal came to the conclusion that the claimants are entitled to compensation, then the same is to be paid by the Insurance Company being the insurer of the offending Bolero vehicle bearing Registration No. HR-06AA-3453. Insurance company/respondent No.3, before the Tribunal filed a separate written statement taking a stand that no accident had taken place and the claim petition has been filed by the claimants in collusion and connivance with the driver and owner of the insured vehicle. Objection was further raised that the driver of the insured vehicle was not holding a valid and effective driving licence.

On the pleadings of the parties, the following issues were framed by the Tribunal

1. *Whether Deepak @ Deepak Tyagi son of Kali Ram has died in an accident caused with vehicle bearing No.HR-06AA-3453 due to rash*

and negligent driving of respondent no.1?OPP.

2. *To what amount of compensation and from whom the claimants are entitled?OPP*
3. *Whether the insured has violated the terms and conditions of insurance policy, if so its effect?OPR3.*
4. *Relief."*

The Tribunal on issue No.1 returned findings in favour of the claimants and held that deceased Deepak had died on account of injuries sustained in the accident and which took place due to rash and negligent driving of vehicle No.HR-06AA-3453 by Dinesh.

Insofar as the compensation amount is concerned, Tribunal assessed the monthly income of the deceased as Rs.15,000/-. An increase of 40% in income was awarded towards future prospects. 1/4th deduction was made towards personal and living expenses of the deceased and multiplier of 16 was applied. On the basis of receipts and bills Exhibit P-16 to Exhibit P-22, proved on record by the claimants towards expenditure on treatment of the deceased a sum of Rs.1,09,200/- was awarded under such head. That apart an amount of Rs.15,000/- each was awarded towards loss of estate and funeral expenses and Rs.40,000/- towards loss of consortium. The total compensation amount awarded as such was Rs.32,03,200/-. The liability to pay the compensation amount was held to be joint and several upon the respondents i.e. driver, owner and the insurance company.

Learned counsel representing the appellant-insurance company has primarily raised submissions with regard to quantum of compensation. It is urged that no documentary evidence had been adduced regarding income of the deceased from his transport company and as such the Tribunal has erred in assessing the monthly income as Rs.15,000/-. It is contended that the income of the deceased under such circumstances ought to have been assessed on the basis of minimum wages admissible on the date of the accident.

A feeble attempt was even made by the counsel with regard to false involvement of the insured vehicle by stating that the author of the FIR and the sole eye-witness examined was Surender Tyagi and who happened to be a cousin brother of the deceased. It may be noticed that even though in the grounds of appeal a plea has been raised with regard to the aspect of contributory negligence having been overlooked by the Tribunal while passing the impugned award, yet no submissions in such regard were addressed.

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

It is a case where the accident that took place on 24.02.2016, was witnessed by PW1 Surender Tyagi. Deepak @ Deepak Tyagi who suffered grievous injuries in the accident expired on the following day i.e. on 25.02.2016. FIR No.72 dated 25.02.2016 under Section 279, 304-A IPC was registered at Police Station Sadar, Panipat on 25.02.2016 itself. The final investigation report submitted by the police authorities Exhibit P-6 revealed that the FIR had been registered on the basis of written complaint of PW1 Surender Tyagi and wherein the registration number of the offending vehicle had been mentioned. The statement of PW1 Surender Tyagi, recorded before the Tribunal was in complete consonance with the version put forth in the FIR as regards the factum and manner of the accident. Merely because the eye-witness i.e. PW1 Surender Tyagi as also author of the FIR happens to be the cousin brother of the deceased cannot be made the basis to dis-believe his version. That apart after submission of the final investigation report, the driver of the offending vehicle was even charge-sheeted by the learned Magistrate (Exhibit P-5) under Sections 279 and 304-A IPC. This Court does not find any merit in the contention raised by counsel with regard to false implication of the offending/insured vehicle. The findings recorded by the Tribunal on issue No.1, are based on due appreciation of evidence.

Insofar as quantum of compensation is concerned, undoubtedly the claimants had asserted the monthly income of the deceased to be Rs.50,000/-. Tribunal has however, assessed the monthly income to be Rs.15,000/-. In this regard the claimants had examined PW3 Rajesh Kumar Jain, Head Cashier, Bank of Baroda, HUDA Branch, Panipat and PW4 Kapil Dev, Deputy Manager, ICIC Bank, G.T. Road, Panipat. PW3 Rajesh Kumar Jain, had proved the account held in the bank in the name of M/s Jai Shri Bala Ji Tempo Transport, which was opened on 18.07.2005 and the proprietor of the said firm was mentioned as Deepak son of Kali Ram i.e. the deceased in the present case. PW5 Anand, was examined by the claimants and who made statement by way of affidavit Exhibit PW5/A stating that he was doing job as a driver with M/s Jai Shri Bala Ji Tempo Transport and was getting salary of Rs.7500/- per month from Deepak Tyagi (deceased). Placed on record and appended alongwith the instant appeal as Annexure A-2 is the statement of Kapil Dev PW4, Deputy Manager, ICICI Bank, G.T. Road, Panipat. Such statement would be crucial as regards assessment of the monthly income of the deceased is concerned. PW4 had clearly stated as regards a loan account in the name of Deepak Tyagi and whereby a vehicle bearing No.HR-67B-6110, had been financed and the EMI of the said financed loan amount was Rs.20,254/- per month. Counsel for the appellant-insurance company adverts to the cross-examination of the PW4 Kapil Dev and wherein he had stated that the loan account was jointly in the name of Deepak tyagi as also co-applicant Krishan Kumar. Be that as it may the equated monthly installment/EMI for the loan was Rs.20,254/-. Even if there was a co-applicant in such loan account, it is clear that the Deepak Tyagi (since deceased) was paying a monthly amount of Rs.10,000/- approximately to service the debt.

Evidence has been adduced which reflects Deepak (deceased) to be the proprietor of the transport firm. He was maintaining a family comprised of his wife, two minor children and mother. The accident had taken place in February 2016. In the totality of circumstances, the assessment of monthly income of the deceased by the Tribunal as Rs.15,000/- cannot by any stretch of imagination be taken as excessive.

This Court finds that the other parameters while computing compensation taken by the Tribunal i.e. additional income towards future prospects, deduction towards personal expenses, multiplier and under-conventional heads are as per guidelines issued by the apex Court in ***National Insurance Company Ltd. Vs. Praney Sethi and others 2017 (4) RCR (Civil) 1009.***

In view of the above, no interference in the matter is called for. There is no merit in the appeal and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

October 22, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No