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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2019.05.03 16:30
I attest to the accuracy and
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FAO-5055-2003

Date of decision : 30.4.2019

Kulwinder Kaur and others

..... Appellants

Versus

Shivji Ram Goyal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashwani Arora, Advocate,
for appellants.

Mr. Sukhdarshan Singh, Advocate,
for respondent No. 3.

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KULDIP SINGH J. (ORAL)

This appeal is preferred against award dated 19.9.2003, passed by Motor Accident Claims Tribunal, Patiala (in short 'the Tribunal'), vide which claim application filed by claimants-appellants was dismissed.

Facts of case are that on 1.9.2001, Punjab Home Guard Jawan Harbahan Singh was present at turning point of Satiwala in the area of village Chak Wakiwala in connection with picketing duty, on GT Road Abohar to Fazilka. HC Wazir Singh alongwith SPO Parmjit Singh were also present on duty. HC Wazir Singh alongwith SPO Paramjit Singh were on kachha portion of road. On the other side, near dhaba of Rajinder Kumar, PHG Harbhajan Singh was standing. They were checking vehicles. In the meanwhile, one jeep No. PB 04E 3859, being driven by a clean shaven youth, aged 30-35 years, came. It was being driven rashly and negligently and hit PHG Harbhajan Singh. It was about 8.00 PM. As a result of accident, PHG Harbahajan Singh received injuries on head, legs and other parts of the body. HC Wazir Singh alongwith SPO Paramjit

Singh started taking care of injured. The driver of jeep left jeep at spot and ran away from spot. On the basis of statement of HC Wazir Singh, FIR No. 221 dated 1.9.2001, under Sections 304A, 279, 337, 338 IPC was registered at PS Sadar, Fazilka, District Ferozepur. During investigation, driver of jeep was identified as Gulab Chand and he was accordingly challaned. PHG Harbhajan Singh succumbed to injuries in Civil Hospital, Fazilka on 2.9.2001. The post mortem was got conducted. It was stated that deceased was aged about 33 years and was drawing monthly salary of Rs. 3,000/- from Punjab Police department. Rs. 50,000/- were incurred on his treatment.

Respondent No. 1, owner of jeep, denied accident. He also denied involvement of jeep in accident.

Respondent No. 2, driver of jeep, also denied accident. It is stated that false claim petition has been filed to claim compensation.

HC Wazir Singh and SPO Paramjit Singh are interested witness.

The insurance company also denied accident. It also denied that jeep was driven rashly and negligently by driver of jeep.

From the pleadings, following issues were framed :-

1. Whether death of Harbhajan Singh took place on 1.9.2001 at turning of Satirwala in the area of village Chak Wakiwal in front of Petrol Pump in road accident caused due to rash and negligent driving of jeep No. PB 04 E 3859 by respondent No. 2, if so its effect ? OPP
2. Whether claimants are the legal heirs dependent upon deceased, if so its effect ? OPP

3. If issues No. 1 and 2 proved to what amount of compensation claimants entitled and from whom ? OPP
4. Whether driver of the offending vehicle was not holding legal and valid driving licence at the time of accident, if so its effect ? OPR-3
5. Relief.

The Tribunal after discussing the evidence held that no eye witness was examined, therefore, it is not proved that accident took place due to rash and negligent driving of jeep by respondent No. 2. As such, claim petition was dismissed.

I have heard learned counsel for parties and have also carefully gone through file.

First of all, this Court is to decide whether accident took place with jeep No. PB 04 E 3859, being driven by respondent No. 2 and whether jeep was being driven rashly and negligently ?

The Tribunal has taken the view that no eye witness was examined.

In this case, to prove case, claimant Kulwinder Kaur appeared as CW1. Jatinder Jakhmi appeared as CW2 proved salary record of deceased. Unluckily, HC Wazir Singh and SPO Paramjit Singh were not examined by claimants.

Now, the question is as to whether in the absence of examination of eye witnesses, claim petition has to be dismissed. I find the reply in negative. The Court is to see overall documentary evidence also to see whether jeep was involved in accident or not. In present case, driver and owner of jeep did not appear in the witness box to deny accident. After

accident, jeep was left at spot and was taken into possession by police.

Therefore, identity of jeep is established. Kulwinder Kaur claimant herself was not present. She is helpless lady and her inability to produce two police officials cannot be taken a ground to record adverse findings against her.

In order to find out whether deceased died due to motor vehicle accident or not, this Court is to examine post mortem report of deceased. The post mortem report shows that deceased had suffered injuries on head, legs and other parts of the body. The injuries are apparently caused by motor vehicle accident. Jeep owned by respondent No. 1 was left at spot. During investigation, police found out that respondent No. 2 was driving jeep. In any case, jeep was insured with respondent No. 3 insurance company.

The learned counsel for insurance company (respondent No. 3) has relied upon judgment, passed by learned Judicial Magistrate 1st Class, Fazilka, dated 5.2.2010, which shows that in criminal trial, Gulab Chand was acquitted for want of examination of eye witnesses. However, I am of the view that said judgment has no bearing on merits of present case. In the present case, involvement of jeep is proved from the fact that jeep was abandoned at spot. It is admittedly owned by respondent No. 1 owner and insured with respondent No. 3 insurance company. The fact that as per version of police, jeep hits PHG Harbhajan Singh, who was standing on kachha path and also considering that owner and driver of jeep did not appear in witness box to deny accident, goes to show that accident is proved. On account of non appearance of driver and owner, adverse inference has to be drawn against them. Accordingly, I hold that PHG

Harbhajan Singh died as a result of rash and negligent driving of jeep No. PB 04 E 3859, being driven by respondent No. 2.

Now, coming to quantum of compensation, deceased was admittedly working in Punjab Home Guard department and was on duty. He was getting Rs. 70/- per day wages. The job in Punjab Home guard is more or less in the nature of permanent job and there were also chances of his absorption in police as a regular employee. The deceased was 33 years of age. Therefore, his wages per month comes to Rs. 2,100/-. Rs. 1,050/- are added on account of future prospects, considering it to be 50%. Total income comes to Rs. 3,150/-. $1/4^{\text{th}}$ i.e. Rs. 787/- is deducted as personal expenses, net income comes to Rs. 2,363/-. Considering age of deceased as 33 years, multiplier of 16 is applied. The amount of compensation comes to Rs. $2363 \times 12 \times 16 = \text{Rs. } 4,53,696/-$. Rs. 70,000/- on account of funeral expenses, loss of estate and loss of consortium are allowed.

The matter regarding allowing consortium was considered by Two Judge Bench of Hon'ble Supreme Court of India in Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others, 2018 (4) RCR (Civil) 333, wherein while considering the judgment in National Insurance Co. Ltd. Versus Pranay Sethi, (2017) 16 SCC 680, the Bench observed as under :-

'8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse (Rajesh and Ors v. Rajbir Singh and Ors. (2013) 9 SCC 54).

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.” (Black's Law Dictionary (5th Ed. 1979).

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child cause great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to loss their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial

Consortium.

Parental Consortium is awarded to children who loss their parents in motor vehicle accidents under the Act.'

In view of judgment of Hon'ble Supreme Court of India in Magma General Insurance Co. Ltd. (supra), children of deceased i.e. claimants No. 2 to 4, are entitled to consortium at the rate of Rs. 40,000/- each. As such, Rs. 40,000/- each to three minor claimants for loss of love and affection are allowed, which comes to Rs. 1,20,000/-. The total amount of compensation comes to Rs. 6,43,696/-. Accordingly, claimants are entitled to compensation of Rs. 6,43,696/- alongiwth interest at the rate of 7% per annum from the date of filing claim petition till realization. Out of amount of compensation, 50% shall go to appellant No. 1 Kulwinder Kaur, who is to run day to day affairs and remaining 50% shall be equally shared by claimants No. 2 to 4. Since age of minor claimants was 3 to 7 years in the year 2003 when claim petition was filed, therefore, they might have become major now. Said amount of 50% shall be equally shared by claimants No. 2 to 4 and be disbursed to them alongwith interest.

In view of foregoing discussion, appeal is allowed.

(KULDIP SINGH)
JUDGE

30.4.2019

sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No