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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3400-2002

Date of decision : 15.7.2019

Jaswinder Singh alias Goldy through LRs Appellant

Versus

Sanwar Hussian and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.K. Sharma, Advocate,
for appellant.

Mr. J.S. Chatrath, Advocate, for,
Mr. Ashwani Talwar, Advocate,
for insurance company.

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KULDIP SINGH J. (ORAL)

This is appeal against award dated 6.12.2001, passed by Motor Accident Claims Tribunal, Hoshiarpur, (in short 'the Tribunal'), vide which Tribunal awarded compensation of Rs. 3,00,000/- on account of injuries received by Jaswinder Singh alias Goldy. It also comes out that appellant, who had filed claim petition before Tribunal through his attorney and was alive at that time, died during pendency of appeal on 23.11.2002. This Court, vide order dated 18.11.2015, sought report from Tribunal regarding cause of death. The Tribunal was directed to record evidence of parties and record its findings. The findings have been received, in which Tribunal, vide order dated 3.5.2016, has concluded that death of deceased was on account of injuries suffered by him in accident and cause of death of deceased was on account of traumatic paraplegia with fracture which is suffered in accident.

Facts of case are that on 5.7.2000, claimant Jaswinder Singh

alias Goldy (now deceased) aged about 20 years, cleaner was accompanying driver Mehar Singh on truck No. PB-11-C-9920, which was going from Rajpura to Amritsar. At some distance, truck got punctured. Truck was parked on left side of road and some bricks and branches of tree were placed to give indication to incoming traffic. While claimant was collecting material on back side of truck, a canter No. UP-11-C-6611 came from Sirhind side and struck against stationary truck on the road side. The rear wheel of truck fell on back of claimant. As a result of which he received injuries and is bed ridden.

Respondents No. 1 and 2 in written statement denied plea that two vehicles were involved in accident. Therefore, owner and driver of truck should have been made party. The expenses and treatment were denied.

From pleadings, following issues were framed :-

1. Whether the claim petition is bad for non joinder of necessary parties ? OPR
2. Whether Sanwar Hussian respondent No. 1 was not holding valid driving licence at the time of accident ? OPR
3. Whether the claimant has received injuries in motor vehicle accident on 5.7.2000 at 4.00 AM in the area of police station Gobindgarh distt. Fatehgarh Sahib with canter No. UP-11-C-6611 being driven in a rash and negligent manner by respondent No. 1 ? OPA
4. To what amount of compensation the claimant is entitled and from whom ? OPA
5. Relief.

The Tribunal held that canter was being driven rashly and

negligently. The Tribunal after considering that there is 100% disability and admission of patient in hospital from date of accident i.e. 5.7.2000 to 3.8.2000, awarded following compensation :-

1.	For permanent disability	Rs. 25000/-
2.	For medical treatment	Rs. 15000/-
3.	For pain and suffering	Rs. 60000/-
4.	For loss of happiness	Rs. 50000/-
5.	Expenses for attendant, diet and hospitalization	Rs. 50000/-
6.	Loss of income	Rs. 100000/-

		Rs. 300000/-

Total compensation of Rs. 3,00,000/- was awarded.

The claimants filed appeal for enhancement of compensation. However, during pendency of appeal he died and his legal heirs were brought on record. Considering that claimant has died, now compensation is calculated in view of changed circumstances treating it as death case. Claimant has stated before Tribunal that he was alive and he was getting Rs. 1600/- as cleaner and Rs. 50/- per day whenever he was travelling. His total income was Rs. 2500/- per month. Tribunal did not record any finding that he was not having such income. Considering that claimant, who was aged 20 years, was a cleaner and considering that for every trip, he was paid Rs. 50/- dearness allowance per day, income of deceased must be Rs. 2500/- per month. Since deceased was 20 years of age, multiplier of 18 is to be applied.

The learned counsel for respondent has vehemently argued that there is no proof on record that death is due to injuries suffered by him in accident. The Tribunal in its report has relied upon statement of Dr. J.S. Dhammi who has stated that deceased was 100% disable due traumatic paraplegia with fracture of D5. He has stated that in this disease, lower

portion of patient does not move and patient is usually bed ridden. So complication like bed soars and infection can develop in patient. Death can occur due to these complications after some time. Admittedly, in this case, no post mortem was done on account of fact that accident was about more than 2 years back. I am of view that proceedings before Tribunal are in nature of summary inquiry. Deceased was 20 years of age. He had no other disease. As a result of accident, he suffered permanent disability and was 100% disable. In case of traumatic paraplegia, patient was unable to move his lower portion and was bed ridden. There was no physical exercise and on account of being bed ridden, he developed many complications, like bed soars and infections which could ultimately prove fatal. Therefore, in the absence of evidence that there was no other disease when claimant was treated initially in hospital, it has to be concluded that he died as a result of traumatic paraplegia. Therefore, findings are accordingly recorded.

In view of death of deceased, compensation is to be recalculated. Admittedly, deceased remained admitted in hospital from 5.7.2000 to 3.8.2000 i.e. for little less than one month. Thereafter, he was shifted to his home and during this period of about 2 years 4 months i.e. 28 months, constant care was required in addition to medical treatment. Before Tribunal, medical bills worth Rs. 12550/- were produced. No compensation was allowed for future medical treatment. Therefore, treating it death case and considering income of deceased to be Rs. 2500/-, 40% are added on account of future prospects i.e. Rs. 1000/-, total income comes to Rs. 3500/-. Deceased was unmarried. Therefore, 50% is to be deducted on account of personal expenses

i.e. Rs. 1750/-, dependency of claimants comes to Rs. 1750/-. Amount of compensation comes to Rs. 3,78,000/- i.e. Rs. 1750 x 12x 18. Rs. 12,550/- for medical expenses, Rs. 25000/- for future medical expenses till his death are allowed. Rs 60,000/- for pain and suffering for 2 years, Rs. 56,000/- for attendant for 2 years and Rs. 70,000/- on account of conventional heads are allowed. Total amount of compensation comes to Rs. 6,01,550/- which is to be paid with 7.5% per annum interest. Since vehicle was insured with insurance company, therefore, insurance company shall be liable to pay compensation.

Coming to entitlement, it comes out that Amarjit Singh is father of deceased. Gurjit Singh, Manmeet Kaur, Vikramjit Singh, Baljit Kaur, Sunita, major brothers and sisters of deceased and except Vikramjit Singh and Sunita, others are stated to be married. Therefore, deceased might be contributing income to his father, Vikramjit Singh and Sunita. Other married brothers and sisters are not entitled to any compensation.

In view of foregoing discussion, appeal is allowed. Compensation of Rs. 6,01,550/- in favour of Amarjit Singh, Vikramjit Singh and Sunita alongwith 7.5% per annum interest on enhanced compensation from date of filing of claim petition till realization. Out of enhanced compensation, 50% shall go to Amarjit Singh and remaining 50% shall be equally shared by Vikramjit Singh and Sunita who are unmarried.

(KULDIP SINGH)
JUDGE

15.7.2019
sjks

Whether speaking order	:	Yes / No
Whether reportable	:	Yes / No