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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2421-1999

Date of decision : 10.4.2019

Chhote Khan and another

..... Appellants

Versus

Girdhari Lal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. B.R. Rana, Advocate,
for appellants.

Mr. R.C.Kapoor, Advocate,
for respondent No. 2.

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KULDIP SINGH J. (ORAL)

This is appeal against award dated 1.4.1999, passed by Motor Accident Claims Tribunal, Faridabad, vide which claim petition filed by present appellants Chhote Khan and Smt. Sahidan, was dismissed.

It is the case of claimants that Rafik Ahmed, aged about 18 years, was working as a truck khalasi on truck No. DEL 2148. On 30.6.1996, offending truck being driven by Aas Mohammad, real brother of deceased Rafik Ahmed, after loading goods from Ahmedabad, was on its way to Dabra in MP. When at about 9.00 AM, truck reached near village Megha Rawat ki Jhonpari, truck was being driven rashly, negligently and dangerously at high speed. When it took turn to railway crossing, the driver of truck lost his control and truck turned turtle in the ditches and deceased came in between ditch and truck and was crushed to death at the spot. The truck was owned by respondent No. 1 and insured by respondent No. 2. Before the Tribunal, claimants claimed Rs. 10,00,000/- as

compensation.

Before Tribunal, respondent No. 1 did not appear and was proceeded against ex parte. Respondent No. 2 contested case.

In the written statement, accident was denied. The whole story was termed as false and fabricated. It was held that driver was not holding valid driving licence and was not driving with the permission of owner.

From the pleadings, following issues were framed :-

1. Whether the accident on 30.6.1998 at about 9 am near vill. Megha Rawat Ki Jhonpari, District Bundi took place due to rash and negligent driving of truck no. DEL 2148 by its driver Ash Mohammad, if so to what effect ? OPP
2. If issue No. 1 is proved, whether the petitioners are entitled to compensation, if so to what amount and from whom ? OPP
3. Whether the driver of truck no. DEL-2148 was holding a valid driving licence to drive the vehicle and was not driving the same with the permission, control and under the employment of respondent No. 1 and as such respondent No. 2 is not liable to pay any compensation ? OPR-2
4. Whether this court has got no jurisdiction to entertain and try the petition ? OPR-2
5. Relief.

The Tribunal held that since no independent witness of accident was examined, therefore, accident was not proved. Issue No. 1 was decided against claimants and consequently issue No. 2 was also decided against claimants. Issue No. 3 regarding validity of driving licence of driver was decided in favour of appellants. Issue No. 4 was decided against respondent No. 2. Consequently, claim petition was dismissed. Against said award, claimants have come in appeal.

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

Original file of this case was burnt in fire which took place in the record room in the year 2014. The file has been reconstructed with the help of learned counsel for parties, who have produced photocopies of various documents. From perusal of documents, it comes out that the Tribunal unluckily did not discuss entire evidence and merely passed a sketchy award that since no eye witness was examined, therefore, accident is not proved.

I am of the considered opinion that proceedings in MACT case are of summary nature. It is not that only eye witness will prove the accident. The accident can be proved from other documents also. There are documents to show that accident took place and that Rafik Ahmed died in said accident. The other document is copy of FIR (Ex.PB) wherein said factum of accident is mentioned. The allegations of rash and negligent driving of truck are also made. The copy of FIR is Ex.PB and copy of report under Section 173 Cr.P.C. is Ex.P2. The police visited spot and prepared site plan. The copy of site plan is also on file. It also comes out that driver was challaned in this case. The driver later on died. Therefore, it is amply proved that Rafik Ahmed died as a result of rash driving of truck by his brother Aas Mohamad. The contents of FIR and investigation by police clearly shows that truck turned turtle, which ordinary could not be unless it is being driven rashly and negligently. Therefore, findings of Tribunal on issued No. 1 are reversed and decided in favour of claimants.

Issue No. 2 regarding quantum of compensation, it comes out that deceased was employed as a labourer on truck. The accident took place in 1996. The facts and circumstances show that truck was loaded from Ahmedabad. The deceased belonged to district Faridabad. They

were to go to Dabra in MP. The facts and circumstances show that deceased was at least helping his brother in transportation of goods. Therefore, his income is to be taken that of a labourer. Considering the income of a labourer at that time to be Rs. 2,100/- per month in which 40% is added as future prospects, the amount comes to Rs. 2,940/-. Since deceased was unmarried, 1/2 is deducted as personal expenses which comes to Rs. 1,470/- per month. The multiplier of 18 is applied. The amount of compensation comes to Rs. 3,17,520/-.

The matter regarding grant of consortium was considered by Constitution Bench of Hon'ble Supreme Court of India in National Insurance Co. Ltd. Versus Swaran Singh and others, 2004 (2) RCR (Civil) 114. The matter regarding allowing consortium to parents 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. Therefore, parents are entitled to consortium. Thus, Rs. 40,000/- each as consortium are allowed to both parents. Rs. 30,000/- on account of loss of estate and funeral expenses are allowed. The amount of compensation comes to Rs. 4,27,520/-. The insurance company shall be liable to pay compensation. 7% per annum interest is allowed on enhanced compensation from the date of filing of claim petition till payment. The amount of enhanced compensation shall be equally shared by claimants. Appeal is allowed.

(KULDIP SINGH)
JUDGE

10.4.2019
sjks

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