IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1331-2001
Date of decision : 10.5.2019

Kanwaljit Kaur and others ...... Appellants

Versus

Dharam Pal and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. A.S. Gill, Advocate,
for appellants.

Mr. Paul S. Saini, Advocate,
for respondent No. 3.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

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KULDIP SINGH J.

This appeal is directed against award dated 4.11.2000, passed by Motor Accident Claims Tribunal, Jalandhar (for short 'the Tribunal'), vide which on account of death of Gian Singh, aged 46 years and Master Jagbir Singh, aged 3 months in road accident on 28.2.1996, the Tribunal awarded compensation to the tune of Rs. 7,68,096/-, to be equally shared by claimants. Respondents No. 1, 3 and 6 were held liable to bear liability to the tune of half amount of compensation and remaining liability of half amount of compensation to be borne by respondents No. 4 and 5. 12% per annum interest from date of filing application till realization was also allowed.

Brief facts of case are that on the fateful day i.e. 28.2.1996, Gian Singh, who was Canadian National, accompanied by his wife and other family members and his brother in law Dilbagh Singh, left New Delhi from Jalandhar in matador bearing registration No. GJ-IV-2659, being driven by Dharam Pal (respondent No. 1). When matador reached near village Machhonda, it hit left side of bus bearing registration No. HR-37-1263, being driven by respondent No. 5, belonging to respondent No. 4, which was coming from opposite direction. As a result of accident, Gian Singh, aged about 45 years and Master Jagbir Singh, aged about little more than 6 months, died in accident. FIR No. 9, dated 28.2.1996, under Sections 279, 337, 304-A IPC was registered at Police Station Sadar, Ambala. It is stated that deceased Gian Singh was working as Warehouse Manager in National Fibre Tech. Inc. in Canada. He was getting 45000 Candian dollars per annum as salary. Due to death of Gian Singh and Master Jagbir Singh, family of claimants has been ruined. His mother, wife and three minor children filed claim petition.

In the reply, respondent No. 5 (driver of bus) took plea that bus driver had stopped bus on left side of road, but matador driver was so rash and negligent that he could not control matador and it struck against bus. Respondent No. 4 also supported his stand. Insurance company denied its liability and stated that Matador was being used for purpose other than it was insured. Respondents No. 1 and 6 did not file any written statement.

From pleadings, following issues were framed :-

1. Whether Gian Singh and Jagbir Singh had died due to accident of matador No. GJ-IV-2659 and bus No. HR-37-1263 ? OPA
2. Whether the accident dated 28.2.1996 in which Gian Singh died was caused due to the rashness and negligence of the driver of bus No. HR-37-1263 ? OPA
3. If issue No. 2 is not proved, whether the accident took place due to rash and negligent driving by the driver of the matador No. GJ-IV-2659 ? OPA
4. Whether the driver of matador Dharam Pal was not holding a valid driving licence ? OPR

5. Whether the claimants are the legal representatives of deceased Gian Singh ? OPA
6. Whether the petitioners are entitled to compensation ? If so, to what extent and from whom ? OPA
7. Relief.

While deciding issues No. 1, 2, 3, the Tribunal held that accident took place due to rash and negligent driving of both vehicles i.e. matador driver and bus driver, as a result of which Gian Singh and Master Jagbir Singh died. While deciding issue No. 4, it was held that driver of matador was holding valid driving licence. Issue No. 5 was also decided in favour of claimants.

While deciding issue No. 6 regarding compensation, income tax return of Gian Singh (Ex.P3) was not relied upon. The Tribunal held that claimants have no where stated that they have to go back to Canada and required compensation as per value of Canadian dollars. Therefore, taking up income of deceased equivalent to post of Warehouse Manager in India, it was held that his monthly salary was Rs. 8,000/- per month. After deducting one third, dependency was taken to be Rs. 5,334/-. Multiplier of 12 was applied and compensation was calculated at Rs. 7,68,096/-. For death of minor, no compensation was awarded. Accordingly, impugned award was passed.

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

Before this Court, appeal has been pressed only on the quantum of compensation for both deceased. No other ground has been pressed by either party. Therefore, this Court will proceed to decide as to whether adequate compensation was granted or not ?

The Tribunal has taken view that income tax return of deceased Gian Singh (Ex.P3) was not proved and it is not proved that he was to go back to Canada. Therefore, income of Warehouse Manager as equivalent to post in India was calculated.

I am of view that approach of Tribunal is illegal and is liable to be set aside.

Taking up income tax return of deceased (Ex.P3), it comes out that detailed income tax return was submitted which was objected to by opposite party. The proceedings before Tribunal are summary in nature and strict rules of evidence are not to be applied. Claimants had filed detailed income tax return (Ex.P3) which shows income from various sources, deductions and tax. Therefore, there is no ground to discard said income tax return, which was filed on 3.4.1995 i.e. before death of deceased Gian Singh. As per income tax return (Ex.P3), deceased was having total income of 45000 Canadian dollars per annum. He was paying tax of 11640 Canadian dollars. The effective income comes to Canadian dollars 33360 per annum. Since deceased left behind five dependents, therefore, one third is deducted as personal expenses, which comes to Canadian dollars 8340. In this way, balance comes to Canadian dollars 25020. Since as per income tax return, date of birth of deceased was 1.1.1950, therefore, he was little more than 46 years of age. In such circumstances, multiplier of 13 is to be applied. Therefore, amount of compensation comes to Canadian dollars 325260 (25020x13).

The findings of Tribunal that there is nothing on file to show that they were to go back to Canada, are also illegal and are set aside.

The passport of deceased (Ex.P1) shows that he was a Canadian National. He was having only limited visa and was supposed to go back to his country. Similarly, Jagbir Singh (minor), who was born on 23.11.1995, was supposed to stay with parents and there is no ground to hold that he was to stay back in India. Moreover, claim petition itself shows that wife of deceased has filed claim petition through general power of attorney Prem Singh Gill. In said power of attorney, wife of deceased has given her Canada address, showing that she is living there. The power of attorney was also sworn in Canada. Therefore, it has to be held that family was to go back to Canada. Therefore, claimants will be entitled to compensation in Canadian dollars and not in Indian rupees, as per income of deceased in Canada, which has already been calculated above.

So far as addition of income on account of future prospects is concerned, deceased was a Canadian National and had settled there and was having good income, therefore, nothing is being awarded on account of future prospects.

So far as deceased Master Jagbir Singh is concerned, Tribunal has not awarded anything. Jagbir Singh was only son of deceased. Deceased had other three daughters, who are claimants No. 3 to 5. Therefore, for loss of only son, parents had to suffer mental shock. Deceased, as per Indian customs, was to look after his parents in their old age. In such circumstances, Rs. 5,00,000/- as consolidated compensation for loss of love and affection, future support to Kanwaljit Kaur (claimant) are allowed. Said amount of Rs. 5,00,000/- shall go to claimant Kanwaljit Kaur to the exclusion of other claimants.

The learned counsel for both parties were directed to find out value of Canadian dollar as on 28.2.1996. They have informed this Court that value of Canadian dollar was Rs. 33.42 on 28.2.1996. Therefore, amount of compensation is converted into Indian rupee and amount of compensation comes to Rs. 1,08,70,189/- (Canadian $ 3,25,260 x 33.42).

In view of foregoing discussion, appeal is allowed. Impugned award is modified to the extent that compensation to the tune of Rs. 5,00,000/- on account of death of Jagbir Singh (minor) is allowed to claimant Kanwaljit Kaur to the exclusion of others. On account of death of Gian Singh, compensation to the tune of Rs. 1,08,70,189/- is allowed. Out of said amount, 10% shall go to Chanan Kaur, mother of deceased, if she is alive. Otherwise, it shall go to remaining claimants. Out of remaining amount, 50% shall go to Kanwaljit Kaur, wife of deceased, who is to run day to day affairs of family. Remaining amount shall be equally shared by respondents No. 3 to 5. Liability of respondents shall be same as determined by the Tribunal. 7% per annum interest on enhanced compensation is also allowed from the date of filing claim petition till realization. Appeal is allowed.

(KULDIP SINGH)
JUDGE

10.5.2019
sjks

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