IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3218-2006 (O&M)
Date of decision: 06.11.2019

Pinky Devi and others

...Appellants

Versus

Mohan and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Anuj Balian, Advocate,
for the appellants.

Ms. Shamsher Kaur, Advocate,
for respondent No.3-Insurance Company.

Mr.Varun Issar, Advocate,
for respondent No.4-Union of India.

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JAISHREE THAKUR, J. (ORAL)

1. This is an appeal that has been filed seeking enhacement of the compansation allowed by the by the Motor Accident Claims Tribunal, Ambala vide award dated 18.08.2005.

2. In brief the facts that need to be noticed are that on account of an accident that took place Suresh Kumar suffered multiple grievous injuries, which resulted in his demise in Military Hospital, Ambala Cantt on 08.08.2004 at the age of 27 years. The incident was witnessed by Ishwar Singh son of Barkha Ram, resident of village Dhanana. Thereafter a claim petition was filed by his legal heirs seeking compensation. The claim was contested by the Driver and owner of the offending tractor. The Insurance

Company filed a separate written statement denying all averments made in the petition and pleaded that no accident had taken place while also submitting that death took place after a period of three years and, therefore, the Insurance Company could not be held liable to pay the compensation. The Tribunal on appreciation of the evidence, held that the claimants would be entitled to compensation of ₹ 4,92,500/- under Section 166 of the Motor Vehicles Act and held the respondents, namely the owner, driver and the Insurance Company jointly and severally liable to pay the same.

3. Learned counsel appearing on behalf of the appellants contends that the income of the deceased has been taken to be that of a labourer, whereas he was in fact employed with the Union of India as a Gunner in the Army with a total pay of ₹ 5735/- as on the date of the accident and, therefore, the compensation that has been awarded is wholly inadequate.

4. Learned counsel appearing on behalf of the Insurance Company would contend that a reading of the evidence of PW-5 would reflect that death was not on account of the accident that took place in the year 2004 and was on account of natural causes.

5. I have heard learned counsel for the parties and with their assistance have gone through the reconstructed paper-book since the main appeal that had been filed was burnt in the fire and under the orders of the High Court, the same has been constructed.

6. At the very outset, this Court takes notice of the orders passed by the Co-ordinate Bench of this Court wherein the Assistant Solicitor General of India was asked to produce on record the pay scale of a Gunner/Sepoy of the Indian Army as on 06.10.2001. Pursuant to the same,

an affidavit of Anchal Dutt, Officer Incharge of Legal Cell, Headquater Chandimandir has been filed showing the rank and pay scale of late Suresh Kumar with Army No. 15761694. As per the affidavit late Sh.Suresh Kumar, who was enrolled in the army was earning ₹ 5,735/- as on the date, the accident took place.

7. Learned counsel appearing on behalf of the Insurance Company would vehemently argue that the Tribunal has erred in not appreciating the statement as given by PW-5 that death was on account of natural causes and not on account of the accident that took place. However, this Court is not in agreement with the argument raised since the Tribunal had considered the deposition of the Doctors who had given continuous treatment to the deceased and had returned a finding that the death was the natural consequence of accidental injuries. If the Insurance Company had been aggrieved of the said finding, it ought to have filed an appeal against the said decision but in its wisdom chose not to do so. Therefore, the question that survives for adjudication by this Court would be whether the Tribunal has erred in awarding compensation on the lower side.

8. I have heard learned counsel for the parties and find that the award that has been passed needs to be modified in terms of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009,*** taking the income of the deceased to be ₹ 5,735/- as per the affidavit that has been filed in Court compensation payable to the claimants-appellants is re-worked and tabulated as under :-

Sr. No	***Heads***	***Calculation***
(i)	Name of the deceased	Suresh Kumar
(ii)	Date of accident	05/10/01
(iii)	Age of the deceased	27 years
(iv)	Monthly income of the deceased	₹ 5,735/-
(v)	50% of (iv) is to be added towards future prospects	(₹ 5,735 +₹ 2,868) = ₹ 8,603/- per month
(vi)	1/4th of (v) above deducted towards personal expenses	(₹ 8,603 - ₹ 2,151) = ₹ 6,452/- per month
(vii)	Compensation calculated after applying the multiplier of 17	₹ 6,452 x 12 x 17 = ₹13,16,208/-
(viii)	Conventional heads i.e. loss of consortium and funeral expenses etc.	₹ 70,000/-
	Total	₹13,86,208 /-

9. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 4,92,500/- to ₹13,86,208 /-.

10 At this stage, counsel for the respondent No.3-Insurance Company prays for leverage in the payment of interest on the enhanced compensation on the ground that the appeal was pending in this Court and no fault can be attributed to them. In view of this, the Insurance Company is held liable to pay the enhanced compensation with interest @ 6.5% per annum from the date of the claim petition till realization.

06.11.2019 **(JAISHREE THAKUR)**
Satyawan **JUDGE**

Whether speaking/reasoned Yes.
Whether reportable No.