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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5213-2005
Date of decision : 8.7.2019

National Insurance Company Limited ...... Appellant

Versus

Rani Devi and others .... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Deepak Suri, Advocate,
for appellant.

Mr. S.K. Verma, Advocate,
for respondents No. 1 to 6.

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KULDIP SINGH J. (ORAL)

The insurance company has filed appeal against award dated 30.8.2005, passed by Motor Accident Claims Tribunal, Sirsa, (in short ' the Tribunal') vide which compensation to the tune of Rs, 26,50,000/- was allowed to claimants on account of death of Balkar Singh.

Balkar Singh, aged about 35 years, who was working in Food Corporation of India, was returning to his home at village Bhamboor from City Sirsa on motorcycle on 7.12.2002. At about 6.30 pm, he was allegedly hit by offending car No. DLJ-410 being driven by Lal Chand respondent No. 1 near Setia Factory, Rania Road, Sirsa. The car was being driven rashly and negligently. Balkar Singh succumbed to injuries. A criminal case bearing FIR No. 756 under Sections 279, 304-A IPC was registered at Police Station City Sirsa against Lal Chand on 7.12.2002.

In written statement, insurance company denied involvement of offending car in accident. Driver also denied involvement of car in

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accident and stated that a false case has been registered against him.

From pleadings, following issues were framed :-

1. Whether the accident took place as a result of rash and negligent driving of car bearing registration No. DLJ/140 driven by respondent No. 1 by Lal Chand as alleged ? OPP
2. If issue No. 1 is proved, whether the petitioners are entitled to compensation, if so, to what extent and from whom ?
3. Whether the claim petition is not maintainable in the present form ? OPR
4. Whether the petitioners have got no cause of action to file the petition ? OPR
5. Whether the petition is bad for non joinder of parties ? OPR-3
6. Whether the petitioners have not come to the Court with clean hands, if so, to what effect ? OPR
7. Relief

The Tribunal found that car was involved in accident and decided issued No. 1 in favour of claimants. While deciding issued No. 2, it took into consideration income tax returns of deceased, future prospects and determined income of deceased to be Rs. 300000/- per annum and applied multiplier of 13 and determined compensation at Rs. 26,50,000/-. Insurance company being aggrieved by quantum of compensation and adverse finding on issue No. 1 has come up in appeal.

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

The plea of learned counsel for appellant is that statement of eye witness Bhushan Kumar (PW5) is not dependable as his statement was

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recorded on 19.2.2003 i.e. after about 2 ½ months. Car was also recovered on 19.2.2003.

I am of view that in this case, police after registering FIR inquired into the case and it was during investigation that involvement of offending car was found. Police took into possession of offending car. Sajjan Singh appearing as RW3 proved FIR and mechanic report submitted by him. Mechanic report of car shows that when car was recovered on 19.2.2003 by police, big damage was found to car. Front bumper was found damaged. The driver side of car was having dent. The driver side front light was broken. The driver side tirade of car was also found bent. It shows that car was involved in some accident. Lal Chand driver himself appeared in witness box as RW1 and tendered his affidavit in examination in chief. Though, he denied accident, but he has offered no explanation as to how his car was extensively damaged. The absence of explanation shows that police in this case recorded statement of claimants, eye witness and mechanic report to prove that car was involved in accidence. Hence, findings on issue No. 1 are affirmed.

Now, coming to quantum of compensation, it comes out that income of deceased as per income tax return for year 2002-03 was Rs. 257942/-. The plea of learned counsel for insurance company is that income tax of Rs. 40000/- was not deducted by Tribunal.

I am of view that even if income tax of Rs. 40000/- is deducted, income of deceased will come to Rs. 217942/-. As per judgment of Sarla Verma Versus Delhi Transport Corporation, 2009 (3) RCR (Civil) 77 considering the fact that age of deceased was 35 years and his job was permanent, 50% is to be added on account of future prospects. If same is

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added, income of deceased will exceed Rs. 3,25,000/-. However, Tribunal assessed income only Rs. 3,00,000/- which is less than income which could have been calculated considering future prospects. Considering age of deceased to be 35 years, multiplier of 16 was to be applied whereas Tribunal applied multiplier of 13. In this way, Tribunal has awarded compensation on lower side. Therefore, there is no ground to interfere in impugned award. Therefore, appeal is dismissed. As per parties, there was stay regarding payment of 50% of amount. Said amount of 50% is ordered to be paid in terms of award within one month.

(KULDIP SINGH)
JUDGE

8.7.2019
sjks

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