IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5232 of 2008
Date of decision:- 25.09.2019

Smt. Chander ...Appellants

Versus

Joginder and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Anil Ghanghas, Advocate for the appellant.

Mr. Rakesh Nehra, Advocate
for respondent Nos. 1 and 2.

Mr. R.C. Gupta, Advocate
for respondent/Insurance Co.

<u>RITU BAHRI J. (Oral)</u>

The present appeal has been preferred by the appellant (for short 'the appellant'), against award dated 25.03.2008 passed by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal') whereby claim petition filed by the appellant was rejected.

The facts in brief are that on 17.03.2006, the son of appellants i.e Devender along with one Surender came from their village Kiloi to Asthal Bohar Hospital, Asthal Bohar for getting their teeth extracted. When they were proceeding towards the aforesaid hospital on the katcha berm of the road, a motorcycle bearing registration No. HR-14-B-0848 being driven by respondent No. 1 in a rash and negligent manner came and hit Devender straigth way. Devender fell down on the road and sustained multiple injuries on his body. He was admitted to PGIMS Rohtak. F.I.R No. 62 dated 17.03.2006 under Sections 279/337 IPC was registered at P.S. Sadar, Rohtak against respondent No. 1. Devender died on 18.03.2006 and offencer under Section 304-A IPC was then added.

The learned Tribunal after going through the entire evidence led by the parties dismissed the claim petition on the ground that there seems to be a collusion between appellants and respondent No. 1 and 2. The appellants have failed to prove that the accident was result of rash and negligent driving of the motorcycle by respondent No. 1. Further the learned Tribunal has held that in the F.I.R the number of the offending motorcycle as told by the complainant, has been mentioned as UP-15P-4316 whereas when Investigating Officer along with Surender reached at the spot he found the number of the motorcycle involved in the accident was HR-14B-0848.

In the present case, the record of the Tribunal is burnt and the copy of statements given by learned counsel for the appellants in the Court today is taken on record as Annexure A-1.

At the very outset learned counsel for the appellants has referred to statement of ASI Rampahl who stated in his examination in chief on 17.03.2006 he had recorded the supplementary statement of complainant Surender regarding the number of the actual motorcycle taken into possession by the police. The said supplementary statement was made part of the report under Section 173 Cr.P.C submitted to the Court. The supplementary statement was recorded on the same day. He had made a telephonic call to the MHC immediately after reaching the spot and told him to correct the number of the motorcycle involved in the accident.

After going through the statement of P.W.5 , the present appeal deserves to be allowed as this witness in his statement has clearly stated that he recorded the statement of Surender and he along with Surender reached the spot and found motorcycle bearing No. HR-14-B-0848 whereas Surender told the motorcycle of the number as UP-15P-4316. Thereafter, this witness made a telephonic call to MHC that the number of the vehicle which was found lying on the spot was not UP-15P-4316 but number is HR-14-B-0848. Further there is no complaint made by the owner of the motorcycle i.e HR-14-B-0848 that he has been falsely implicated.

Thus, the accident has been duly proved by the appellants. Further the parents are also entitled for compensation of Rs.40,000/- each under the head of loss of filial consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram, 2018 (4) RCR Civil 837*** .

Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike*

determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

The monthly salary of the deceased can be taken at Rs.3500/- per month (minimum wages), as the claimants have not proved his income. In the present case, the compensation is being assessed as per the judgments mentioned above:-

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.3000/- per month

Sr. No.	***Heads***	***Calculations***
(ii)	40% of (i) above to be added as future prospects=	Rs.3000+Rs.1200=Rs.4200/- per month
(iii)	½ of (ii) deducted as personal expenses of the deceased=	Rs.4200-Rs.2100=Rs.2100/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.2100X 12 X 18= Rs.4,53,600/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Loss of filial consortium (mother)	Rs.80,000/- (Rs.40,000/- each)
(viii)	Total Compensation awarded	Rs.05,63,600/-

The compensation of Rs.05,63,600/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% in view of judgment of Hon'ble the Apex Court in Civil Appeal No. 4528-2019 titled as ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019***. The respondents are liable to pay the compensation to the appellants jointly and severally.

Accordingly, award dated 25.03.2008 is set aside and the present appeal is partly allowed to the above extent.

25.09.2019 (***RITU BAHRI***)
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***