IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 3807 of 2010
DATE OF DECISION :- October 22, 2019

Maya Devi and others ...**Appellants**

Versus

Kanwar Pal and others ...**Respondents**

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Surender Deswal, Advocate for the appellants.

Ms. Vandana Malhotra, Advocate for respondent No. 3.

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Briefly stated the facts of the case are that on 5.9.2007 at about 5.00 P.M., deceased Isham Singh was preceding on his motor cycle bearing registration No. HR-05Q-0824 of Bajaj CT-100 towards his village Kalheri from Karnal. His brother Surinder Singh was following him on his separate motor cycle. At about 5.00 P.M. when they reached at divider near Shobha Farm/Nursery, Gharaunda a tractor Sonalika-D 135 bearing Chasis No. CZJSA103751/3, Engine No. 3097F62K103689 loaded with paddy yield, which was being driven by Kanwar Pal-respondent No. 1 in a rash and negligent manner. When Isham Singh tried to cross the tractor trolly then its driver without blowing horn and without giving any indication of right turn all of a sudden turned his tractor-trolley towards right side with the result Isham Singh along with his motor cycle fell down and wheel of the tractor trolley ran over the motor cycle. Isham Singh had suffered multiple injuries to which he succumbed at the spot. After the accident respondent No. 1 Kanwar Pal left from the spot leaving the tractor trolley behind. Formal F.I.R. was registered against respondent No. 1 with regard to the accident. Legal representatives of deceased namely his widow Maya Devi, minor daughter Namrata Devi, minor son Ajay Kumar and mother Ranjit Kaur had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Kanwar Pal-driver, Ramesh Kumar-owner and ICICI Lombard General Insurance Company Ltd., Karnal-insurer of tractor trolley bearing bearing Chasis No. CZJSA103751/3, Engine No. 3097F62K103689 (hereinafter referred to as the offending vehicle), claiming compensation of Rs.2 crores along with interest @ 18% per annum.

According to version of the claimants, the deceased was aged about 35 years and was working as an L.I.C. Agent and as an agriculturist earning Rs.1 lac per annum and with his death they had been deprived of the economic support.

On getting notice, all the three respondents appeared and offered a contest. Issues on merits were framed and parties were afforded opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal, Karnal decided issue no. 1 holding that though respondent no. 1 was driving tractor trolley in a rash and negligent manner but the deceased driving motor cycle coming from behind should have also exercised proper care while overtaking and approaching turn/intersection and deceased should have slowed down the spped of motor cycle to avoid the accident. In that way, there was some negligence on his part also and it was a case of contradictory negligence. Negligence of respondent No. 1 Kanwar Pal-tractor trolley driver was assessed to be 75% and that of deceased motor cyclist to be 25%.

I have heard learned counsel for the parties besides going through the record.

Though learned counsel for the claimants has vehemently argued that the accident had taken place solely on account of rash and negligent driving of tractor trolley by respondent No. 1 Kanwar Pal and deceased could not be said to have contributed to the accident in any way. But I find the reasoning given by the Tribunal in arriving at the conclusion that it was a case of contributory negligence to be cogent and convincing. Definitely there was some lack of care and caution on the part of the deceased motor cyclist while he was in the process of overtaking the tractor trolley and therefore finding recorded by the Tribunal of contributory negligence in the ratio of 75%-25% is proper and appropriate and does not call for any interference. In that way respondent No. 1 Kanwar Pal being driver, Ramesh Kumar-owner and ICICI Lombard General Insurance Company Ltd., Karnal-insurer are definitely liable to pay compensation to the legal heirs of the deceased. The Tribunal while assessing the compensation payable has taken the age of the deceased to be 38 years in view of his date of birth entered in the School Certificate. This was properly done. The Tribunal has considered Form 16A for tax deduction at source (TDS) for various years for calculating income of L.I.C agent which is as follows :-

Period	Commission Paid	Tax deducted
2001-2002	2,40,015.65	24,482-00/-
2002-2003	2,90,147.19	30,465-00/-
2003-2004	2,66,162.50	26,616-00/-
2004-2005	3,49,812.07	35,681-00/-
2005-2006	3,48,802.01	35,578-00/-
2006-2007	9,34,613.32	95,330-00/-
2007-2008	2,59,075.90	26,683-00/-

As per testimony of Sh. Rajinder Bhatt, Assistant Branch Manager LIC of India the deceased was working as a productive agent and was being paid commissions on the policies having one time single premium and policies having regular mode of premium was also taken into consideration. The Tribunal did not accept such evidence to assess the income of the deceased in that way for the reason that Income Tax Returns had not been brought in evidence by the claimants. However, I find the approach of the Tribunal in that regard was not correct. TDS Form 16A is an important peace of evidence to determine income of a person because that reflects the amount earned and tax deducted there on. However, a perusal of the commission paid to the deceased for various years goes to show that it was in the range of Rs.2,40,000/- to Rs.3,50,000/- around except for the year 2006-2007 when it was abnormally high of 9,34,613.32. That cannot be taken to be an index of his regular income. However, considering the fact that the deceased had earned commission of Rs.2,59,075.90/- for a period of five months it would be proper and appropriate to take his annual income as Rs.3,60,000/- by making some guess work. Therefore, I take his income as such. Of course 10% amount from his income is to be deducted towards income tax. Therefore, his income would be Rs.3,24,000/-.

The Tribunal, however, has not granted any amount of compensation towards future prospects. In terms of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** where age of the deceased was below 40 years an addition of 40% of the established income is to be made. Doing that the annual income of the deceased is worked out to be Rs.4,53,600/-.

The Tribunal, while taking the age of the deceased had deducted 1/3rd of the amount towards personal expenses of the deceased, which has been correctly deducted. The Tribunal has used multiplier of 12. However, in my view considering the age of the deceased, multiplier of 15 should have been applied. Doing that the amount comes out to Rs. 45,36,000/-. The Tribunal has awarded a sum of Rs.10,000/- only under the conventional Heads which in view of ratio of

'***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** the claimants are entitled to get total 70,000/- under those Heads. Making addition of that amount the total compensation amount comes out to Rs.46,06,6000/- (4,53,600 + 70,000). 25% of the amount is to be deducted on account of contributory negligence. Therefore, compensation amount comes out to Rs.34,54,500/-. In that way, the enhanced amount of compensation comes out to Rs.22,47,003/- (34,54,500 – 12,07,497).

Accordingly, the appeal is allowed partly. The impugned award is modified and a sum of Rs.22,47,003/- as enhanced compensation is awarded to the claimants payable by the respondents jointly and severally with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization. The enhanced amount shall be apportioned among the claimants proportionately in terms of the direction already issued by the Tribunal in the impugned award. The other terms and conditions with regard to deposit of share of minor claimants shall also apply to their share in the enhanced compensation.

With such modification, the appeal is allowed partly.

(H.S. MADAAN)
JUDGE

October 22, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No