IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2660-2011(O&M)
Date of decision:-24.9.2019

Mrs.Neelam Aggarwal

...Appellant

Versus

Nand Lal and others

...Respondents

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

Present: Mr.Puneet Jindal, Sr.Advocate with
Mr.Ashutosh Gupta, Advocate
for the appellant.

Mr.Neeraj Khanna, Advocate
for the respondent No.4 – insurance company.

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H.S. MADAAN, J.

Briefly stated, facts of the case as per version of the claimant/petitioner are that on 13.2.2008 at about 4:45 p.m. deceased Shivani Saini @ Aggarwal aged about 34 years, working as Insurance Executive with Max New York Life Insurance Company, earning Rs.15,000/- per month was returning home on her Activa scooter bearing registration No.PB-08-AR-7247 going on correct side of the road at slow speed; when she had reached Lightanwala Chowk of bus stand, G.T. Road, Jalandhar, in the meanwhile bus bearing registration No.HP-34B-7507 (hereinafter referred to as the offending vehicle) belonging to Himachal Road Transport Corporation, Shimla and Himachal Road Transport Corporation, Kullu (respondents No.2 and 3) came out of the terminal of bus stand and overtook a car; the bus was being driven at high speed in a rash and negligent manner by respondent No.1 – Nand Lal and it struck against Activa scooter of Shivani Saini @ Aggarwal from backside and she got crushed under wheels of the offending vehicle; she died at the spot; formal FIR No.38 dated 13.2.2008 for the offences under Sections 279 and 304-A IPC was registered at Police Station Division No.4, Jalandhar.

Mrs.Neelam Aggarwal – mother of the deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Nand Lal – driver, Himachal Road Transport Corporation, Shimla and Himachal Road Transport Corporation, Kullu – owners. The insurance company of the offending vehicle was impleaded as a party without mentioning its particulars but since the bus was not insured its particulars could not be entered at Sr.No.4. Gurteg Singh Saini husband of the deceased was impleaded as proforma respondent No.5.

On being put to notice, respondents No.1 to 3 appeared, whereas respondent No.5 did not appear despite service and was proceeded against ex-parte.

In the joint written statement filed by respondents No.1 to 3, they took up various legal objections and on merits contending that the accident had taken place due to negligence of the deceased and a wrong FIR was got registered against respondent No.1. According to the answering respondents, the offending vehicle was not insured with any insurance company. Such respondents prayed for dismissal of the petition.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was allowed by the Motor Accidents Claims Tribunal, Jalandhar (hereinafter referred to as the Tribunal) vide award dated 4.10.2010 awarding compensation of Rs.50,000/- to the claimant payable by respondents No.1 to 3 jointly and severally. 9% interest per annum was granted to the claimant from the date of filing of the petition till the payment of the amount.

Feeling that the compensation awarded was on lower side, the claimant has approached this Court by way of filing an appeal, notice of which was given to respondents. However, only respondent No.4 – insurance company has put in appearance through counsel.

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

I find that the whole approach adopted by the Tribunal has been wrong and erroneous. The Tribunal on analysis of the evidence adduced before it while deciding issue No.1 came to the conclusion that Nand Lal – respondent No.1 had caused death of Shivani Saini @ Aggarwal by rash and negligent driving of the bus in question but when it came to grant of compensation, the Tribunal went off the track. The deceased was a married woman. Her husband Gurteg Singh Saini has been impleaded as proforma respondent No.5. The claim petition has been filed by her mother. The inference reached by the Tribunal that claimant is not entitled to get any compensation on account of death of the deceased is wrong and unjustified. The legal heirs of the deceased are definitely entitled to get compensation. Firstly quantum of compensation is to be determined. The age of the deceased as it transpires from the record was 34 years. She is statedly to be working as Insurance Executive with Max

New York Life Insurance Company, Jalandhar, however, the claimant has not summoned any record from the said concern to show that the deceased was in fact employed with that concern or that she was drawing any salary therefrom. Under the circumstances, she is to be taken as a housewife.

A housewife does contribute to the family by doing household work and value of her services cannot be underestimated. A married woman is not totally cut off from her parental family. Normally relations between a married woman and her mother are cordial and full of warmth. Giving of gifts in cash and kind on various occasions is also there. Instances are not uncommon when the married woman take upon themselves to look after their parents in old age.

In ***Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673***, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month. In FAO-5697-2015 having title ***Sh.Rajinder and***

others Versus Sh.Jatinder Kumar and others decided on 26.11.2018 by a Co-ordinate Bench of this Court, the contribution of the housewife was taken as Rs.11,000/- per month.

Keeping in view the facts and circumstances of the case, the age of the deceased, the economic background of the parties, I find that it would be proper and appropriate if the value to her service rendered by the deceased Shivani Saini @ Aggarwal to the family is taken to be Rs.6,000/- per month.

In that way, the annual contribution comes out to Rs.72,000/- (6,000 x 12). Keeping in view the age of the deceased, the multiplier of 16 is to be used in terms of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** . The compensation comes out to Rs.11,52,000/-(72,000 x 16).

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, the claimant/proforma respondent No.5 are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 11,52,000 + 70,000 = 12,22,000/-.

The Tribunal has awarded compensation of Rs.50,000/-.

In this way, the enhanced amount comes out to Rs.11,72,000/- (12,22,000 - 50,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.11,72,000/-.

Of the compensation awarded, the liability of respondents No.1 to 3 shall be joint and several. The amount shall be apportioned as follows:

1. Petitioner – Neelam Aggarwal(mother) - 50%
2. Respondent - Gurteg Singh Saini(husband)– 50%

With such modification, the appeal is allowed partly with costs.

24.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No