IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.520 of 2011 (O&M)
Date of decision: 03.09.2019

Smt. Urmila and others ... Appellants

Versus

Tek Ram and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Akash Vashisth, Advocate for
Mr. Sanjay Vashisth, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

CM Nos.5322-CII of 2017 and 20361-CII of 2018

Dismissed as not pressed.

Main Case

The claimants are in appeal seeking enhancement of compensation on account of death of Surjan Singh in a motor vehicular accident that took place on 12.09.2009.

The Tribunal awarded Rs.27,74,266/-, detailed hereunder:-

Monthly income of the deceased	Rs.29,500/-
Multiplier	13
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.27,54,266/-
Expenses on funeral	Rs.5000/-
Loss of estate	Rs.5000/-
Loss of consortium	Rs.5000/-
Loss of love and affection	Rs.5000/-

However, only 50% compensation has been paid to the claimants in view of findings in para 19 of the award that motorcyclist as well as respondent No.1 contributed equally to the accident.

The first submission made by counsel for the appellants is that though the Tribunal, in para 19 of the award, has held that the deceased sustained injuries on head also but as per postmortem report, there is no injury on head of the deceased.

Another submission made by counsel is that since the Tribunal has attributed contributory negligence to driver of both the vehicles, the present, at best, can be a case of composite negligence of the offending truck and motorcycle driven by Udai Singh and the claimants are entitle to recover compensation from either of the joint tort-feasers. In addition, it is argued that since the driver, owner or insurer, if any, of the motorcycle on which the deceased was a pillion rider have not been impleaded as a party in the claim application, findings of the Tribunal attributing negligence to driver of the motorcycle otherwise cannot be allowed to sustain. The last submission made by counsel is that since the offending vehicle driven by Tek Ram respondent No.1 therein hit the motorcycle driven by Udai Singh from behind, there is no question of any composite negligence being attributed to driver of the motorcycle.

With regard to compensation, it is argued that the claim has been filed by the widow and four children of the deceased, held to be dependent upon income of deceased Surjan Singh, therefore, deduction for personal expenses should be 1/4th in place of 1/3rd. Claimants are entitle to addition in income for future prospects and they may be allowed adequate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, has supported the award.

Though the Tribunal, in para 19 of the award, has stated that deceased sustained injuries on head also and if head gear was worn by deceased then it may possibly save him from head injury but eventually the Tribunal has attributed contributory negligence to drivers of both the vehicles involved in the accident. Indisputably, Surjan Singh (deceased) was not driver of motorcycle which was actually driven by Udai Singh. That being so, the Tribunal has not attributed any negligence to the deceased. However, the Tribunal has wrongly held it to be a case of contributory negligence in place of composite negligence. Even if it is accepted that the present is a case of composite negligence of driver of motorcycle and driver of offending vehicle No.HR-55-P-3007, the claimants are entitle to seek compensation from either of the joint tort-feasers and as such, findings of the Tribunal allowing only 50% of assessed amount suffer from a serious legal flaw and cannot sustain. Examined from another angle, since the driver, owner and insurer, if any, of the motorcycle had not been impleaded as a party, the Tribunal possibly could not decide if any negligence to driver of the motorcycle can be attributed. This apart, perusal of the postmortem report of the deceased would reveal that no injury was found on his head rather it has been mentioned that skull is healthy and intact. The cause of death is due to injury to the chest wall causing hemothorax, injury to lungs and hemorrhagic shock. Analysed from any angle, findings of the Tribunal denying 50% compensation to the claimants are grossly erroneous thus, set aside. The claimants shall be entitle to entire compensation assessed by the Tribunal and additional compensation, if any, allowed by this Court.

This brings the Court to quantum of compensation payable in the case. The application for compensation has been filed by the widow and four children of the deceased held to be dependent upon income of the deceased, therefore, admissible deduction for personal expenses would be $1/4^{th}$. Claimants shall be entitle to addition in income for future prospects to the tune of 30%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.44,86,950/- [(29,500 x 12 x 13) + (30% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.45,56,950/- and additional amount is Rs.31,69,817/- (45,56,950 – 13,87,133), payable with interest @ 7.5% per annum from the date of petition till realization, to be shared equally by the claimants.

The appeal is partly allowed in the aforesaid terms.

03.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No