IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-943-2010 (O&M)
Date of decision: 26.09.2019

Shailender Singh and another

...Appellants

Versus

Rajbir and others

...Respondents

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

Present: Mr. Ashish Gupta, Advocate for the appellants.

Mr. Harkesh Kumar, AAG, Haryana for respondent No.2.

Mr. Punit Jain, Advocate for
Mr. M.B. Jain, Advocate for respondent No.3.

*****

H.S. MADAAN, J.

Briefly stated facts of the case are that the claimants Shailender Singh and his wife Smt. Girja Singh, both residents of District Sirohi, Rajasthan, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Rajbir-driver, Haryana Roadways Rewari through its General Manager-owner and ICICI Lombard General Insurance Company Ltd., Gurgaon-insurer of bus No.HR-47-A-0538 (for short 'offending bus'), claiming compensation on account of death of their son Navneet Singh in a road side accident, involving the bus in question. As per version of the claimants, on 04.09.2008, their son Navneet Singh aged about 23 years along with his colleagues Achal Kumar Jain and Rahul Tyagi were crossing National

Highway No.8 near Square Building, DLF-II, Gurgaon, when the offending bus driven by respondent No.1 Rajbir at a fast speed in a rash and negligent manner came and struck Navneet Singh, due to which he fell down and received serious and grievous injuries. He was removed to Kalyani Hospital, Gurgaon by said Achal Jain, where the doctor declared him dead. An FIR No.271 dated 04.09.2008 for offences under Sections 279 and 304-A IPC was registered at PS DLF-II in that regard. According to the claimants, the deceased was employed with Sparsh BPO Company, Gurgaon and was drawing salary of Rs.5815/- per month. He was only earning member of the family and the claimants had suffered a lot on account of his untimely demise.

On getting notice, all the three respondents put in appearance and contested the claim petition by filing written statements. In the written statement submitted by respondent No.1, he denied happening of any such accident, stating that he has been falsely involved in the criminal case. The stand taken by respondent No.2 in its written statement is almost the same as that of respondent No.1. However, according to such respondent, the bus was insured with respondent No.3-insurance company and the compensation amount, if any, is to be paid by such insurance company.

In the written statement filed on behalf of respondent No.3-insurance company, it also denied involvement of bus in question, contending that respondent No.1 was not holding a valid driving license and owner of the bus had violated the terms and conditions of the insurance policy. The accident, if any, took place due to sole negligence of the deceased.

All the respondents prayed for dismissal of the claim petition.

No replication was filed. On pleadings of the parties, the following issues were framed:-

1. Whether the accident in question was caused by respondent No.1 while driving bus bearing registration No. HR-47-A-0538 in a rash and negligent manner resulting into death of Navneet, as alleged? OPP
2. If issue No.1 is proved, whether the claimants are entitled to any compensation and if so to what extent and from whom?OPP.
3. Whether the respondent No.3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy? OPR(3)
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Gurgaon (for brevity 'the Tribunal') vide award dated 01.09.2009, accepted the claim petition and awarded compensation of Rs.3,26,800/- to the claimants payable by all the three respondents, jointly and severally, to be apportioned among both the claimants equally. 9% p.a. interest was awarded to the claimants from the date of filing of claim petition till actual realization. It was directed that out of share of claimants, 25% shall be paid in cash and the remaining 75% shall be deposited in the form of some fixed deposit scheme fetching maximum rate of interest in a nationalized bank for a period of three years.

Feeling aggrieved by the amount of compensation awarded to them by the Tribunal, both the claimants have approached this Court, by way of filing the present appeal seeking enhancement of compensation, notice of which was given to the respondents, however, only respondent Nos.2 & 3 have put in appearance to offer a contest.

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

Learned Tribunal on appreciation of the oral as well as documentary evidence brought before it has returned a finding that respondent No.1 Rajbir was author of the accident by his rash and negligent driving of the offending bus, in which, the deceased Navneet Singh had suffered injuries, to which, he had succumbed. The finding so recorded by the Tribunal is proper and appropriate and does not call for any interference. It being so, the driver, owner and insurance company of the offending bus are definitely liable to pay compensation.

While assessing the compensation, the Tribunal took the age of deceased to be 23 years, relying upon the date of birth entered in his Higher Secondary Examination certificate Ex.PE as 28.07.1985, whereas, the accident had taken place on 04.09.2008. It is consistent case of the claimants that the deceased was working with Sparsh BPO Company as a Customer Service Associate and was drawing salary of Rs.5815/- per month. PW-3 Onkar, Assistant Manager from that company had proved on record the appointment letter of the deceased as well as increment letter besides salary slips, stating that he was getting salary of Rs.6674/- per month. However, the Tribunal adopted a hyper-technical approach in dealing with the matter and by making several deductions, assessed salary of the deceased to be Rs.3000/- per month. I find that the approach of the Tribunal in doing so was not proper. Income of the deceased, who was serving a company as Customer Service Associate, taken to be Rs.3000/- per month is on low side and it would be proper and appropriate to take the monthly income of the deceased to be Rs.5500/-.

The Tribunal has not made any addition towards future prospects. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil) 1009**, 40% of the amount is to be added towards future prospects, keeping in view the fact that the deceased was aged less than 40 years at the time of his death. Therefore, adding the said amount, the monthly income of the deceased is arrived at Rs.7700/-.

Considering that the deceased was a bachelor, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, 50% of the amount is to be deducted towards his personal and living expenses. Doing that, the dependency of the claimants-his parents comes out to Rs.3850/- per month, annual dependency Rs.46,200/- (3850 X 12).

Considering the age of deceased, multiplier of 18 is to be applied. The Tribunal fell in error in using the multiplier, considering the age of claimants and not age of deceased, however, in view of judgment **Pranay Sethi's (supra)**, multiplier is to be used keeping in view the age of deceased. Therefore, the total compensation payable comes out to Rs.8,31,600/-.

The claimants are entitled to get Rs.15,000/- on account of loss of estate and Rs.15,000/- towards funeral expenses in terms of Apex Court authority **Pranay Sethi (supra)**. Thus, the total compensation payable is arrived at Rs.8,61,600/-. The Tribunal has awarded compensation of Rs.3,26,800/-. In that way, the claimants are entitled to get enhanced compensation of Rs.5,34,800/-. They would be entitled to get interest @ 7.5% p.a., on the enhanced amount of compensation from the date of filing of appeal till actual realization. The amount of compensation would be apportioned among the claimants in equal shares. The liability to pay this amount would be joint and several of all the three respondents. The insurance company is directed to deposit the enhanced amount in the bank accounts of the claimants and they would be at liberty to deal with the amount in the manner, they feel like.

The appeal stands partly allowed.

26.09.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No