IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1775 of 2012 (O&M)
Date of decision : 11.2.2019
...

Seema Devi and others
................Appellants

vs.

Randhir Singh and another
.................Respondents

2) FAO No. 1647 of 2012 (O&M)
...

Shree Ram General Insurance Company Ltd.
................Appellant

vs.

Seema Devi and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajinder Singh Rana, Advocate for the appellants.
(for respondents in FAO 1647-2012)

Mr. Sanjeev Goyal, Advocate for respondent No.2
-Insurance company (for appellant in FAO 1647-2012)

...

H. S. Madaan, J. (Oral)

CM 2583-CII-2019 in
FAO 1775-2012

This is an application under Order 22 Rule 3 CPC for impleading LRs of appellant No.1 – Seema Devi.

Heard.

Allowed, subject to all just exceptions.

Amended memo of parties filed. The same be taken on record.

On account of death of Rohtash s/o Jagdish, aged about 43 years, who according to the claimants, was working as an agriculturist, as well as running a dairy farm, earning Rs.20,000/- per month, in a road accident, which took place on 4.8.2010, at about 9.15 P.M. in the area of village Ajrana Kalan, near the fields of Kartar Singh, allegedly on account of rash and negligent driving of Canter No. HR-01P-3808 (hereinafter to be referred to as 'the offending Canter') by respondent No.1 Randhir Singh, LRs of deceased namely, Smt. Seema Devi, aged about 40 years - wife, Deepa Rani, aged about 21 years - daughter, Deepak aged about 19 years - son, Meenu aged about 17 years - minor daughter, Raj Bala aged about 62 years - mother and Jagdish - father aged about 65 years, brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation to the tune of Rs.25 lacs. In the said claim petition, they had impleaded Randhir Singh driver and owner of the offending Canter and Shree Ram General Insurance Company Limited, Jaipur, - insurer of that Canter.

On getting notice, both the respondents appeared and offered a contest.

However, vide award dated 24.11.2011, the Motor Accident Claims Tribunal, Kurukshetra accepted the claim petition and awarded compensation of Rs.7,12,000/- to the claimants with interest

@ 7.5% per annum, from the date of claim petition till date of actual realization. The compensation amount was apportioned among the claimants, the details of which are given in the award itself. Both the respondents were held to be jointly and severally liable to pay the compensation and it was clarified that respondent No.2 Insurance company would be liable to ideminfy the insured.

The claimants as well as respondent No.2 Insurance company felt dissatisfied with the award and have filed separate appeals, notice of which was given to the respective respondents.

I have heard learned counsel for the appellant-Insurance company and learned counsel for claimant-respondents, besides going through the record.

FAO 1647-2012

The main thrust of arguments of learned counsel for the appellant – Insurance company has been that the income of deceased @ Rs.6000/- per month has been taken to be on higher side, without there being any documentary or authenticated evidence to corroborate that and the income of the deceased should have been taken to be that of skilled labourer, which at the relevant time was Rs.4,608/-, as per Notification issued by Labour Commissioner for the State of Haryana for the relevant time.

Whereas Learned counsel for the claimants respondents has vehemently contested this contention stating that the claimants had led sufficient evidence to show that the deceased was an agriculturist and J-Forms with regard to the sale of crops by him had been proved in evidence. In addition to that he was engaged in avocation of dairy farming. Therefore, the Tribunal was justified in taking the monthly income of the deceased as Rs.6,000/-.

After hearing the rival contentions, I find that had the claimants led no evidence with regard to income and avocation of the deceased, then the Tribunal might have taken his income to be that of a skilled labourer, but in the instant case, the claimants had examined PW-3 Parveen Kumar, a Commission Agent, who had proved the J-forms as Exhibit P-1 to P-13, showing that deceased used to sell his produce to his concern, since the year 2008 and value of the crop sold by him was to the extent of Rs. 2 lacs per year. The Tribunal by due application of mind and proper reasoning has not accepted this figure to be income of the deceased and has rather observed that the J-forms placed on the record only show the crops produced and the land has been inherited by the legal heirs, who are the claimants. However, Rohtash was managing the land and he must have some income in that capacity, which cannot be less than that of a skilled labourer. Furthermore, he was a matriculate, though the Tribunal has observed that his income cannot be less than that of a skilled labourer, but at the same time has drawn inference that he was managing the land and must have some income in the capacity of Manager. Therefore, it cannot be said that income of the deceased should have been taken strictly as that of a skilled labourer. Keeping in view the facts and circumstances and evidence adduced by both the parties, the Tribunal was justified in taking monthly income of the deceased as Rs.6,000/-.

No other contention has been put forward by learned counsel for the appellant. Therefore the appeal is found to be without any merit and the same is dismissed.

Learned counsel for the Insurance company has submitted that at the time of filing of appeal, a sum of Rs.25,000/- was deposited in the Registry of this Court.

Let this amount be remitted to the Tribunal by the Registry.

FAO 1775-2012

In the appeal filed by the claimants, learned counsel for the claimant-appellants has submitted that the Tribunal has taken age of the deceased to 45 years and multiplier of 13 has been applied. Though in the light of ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** as has been referred by the Tribunal itself, multiplier of 14 should have been used. I find force in such contention of learned counsel for the appellants.

The Tribunal clearly fell in error in using multiplier of 13 instead of multiplier of 14, as observed in ***Smt. Sarla Verma's case (Supra).***

Learned counsel for the appellants has further contended that no addition was made on account of future prospects, which should have been done, as has been held in law laid down by the Apex Court in ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** .

I have gone through the said authority with assistance of learned counsel for the parties. Therein it has been mentioned that in case the deceased was self employed, the addition of 25% of the established income would be there when the deceased was between 40 to 50 years. Therefore, making addition of 25% to the income of the deceased the same is worked out to Rs.7,500/- (Rs.6,000 + 1,500). Deducting 1/4th amount towards personal expenses of the deceased, the dependancy of the claimants is worked to (Rs. 7,500 – 1,875) Rs.5,625/- per month. The annual dependency multiplying by 12 comes out to Rs. 67,500/- (5,625 X 12). By applying the multiplier of 14, the total compensation payable is worked out to Rs.9,45,000/- (Rs.67,500 X 14).

The Tribunal has awarded a sum of Rs.10,000/- on performing last rites of deceased Rohtash. No amount under other conventional Heads i.e. Loss of estate, loss of consortium has been awarded. In view of ratio of ***Pranay Sethi's case (Supra),*** the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium, Rs.15,000/- towards funeral expenses (Rs.15,000 + 40,000 + 15,000 = Rs.70,000/-. Thus in that way the total compensation payable to the claimants, thus comes to Rs. 10,05,000/- (9,45,000 + 60,000).

The Tribunal has already awarded a sum of Rs. 7,12,000/-. Thus the claimants are entitled to additional compensation of Rs.2,93,000/- The claimants shall be entitled to get interest on this amount @ 7.5% per annum from the date of filing of appeal till actual realization. The apportionment and other terms and conditions would remain the same as in the Tribunal award. The appeal is accepted with costs.

Since Seema Devi widow of the deceased is stated to have expired and her children i.e. two daughters, namely, Deepa Rani and Meenu and son Deepak, have been brought on record, the additional compensation be disbursed to all the three of them in equal shares.

Accordingly, the appeal is accepted with costs.

(H.S. Madaan)
Judge

11.2.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No