IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-624-2011(O&M)
Date of decision:-25.2.2019

Smt.Kanta

...Appellant

Versus

Harnek Singh and others

...Respondents

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

Present: Mr.K.S. Dhillon, Advocate
for the appellant.

Ms.Shamsher Kaur, Advocate
for the respondent No.3 – Insurance Company

****

H.S. MADAAN, J.

On account of death of Raju @ Naresh Kumar, aged about 15 years, stated to be running a tea stall along with her brother-in-law i.e. husband of his sister Kanta, earning Rs.3,000/- to Rs.4,000/- per month, in a motor vehicular accident, which took place on 20.9.2002 at about 9:00 p.m. in the area of turn near Guru Ravi Dass Chowk, Jalandhar, allegedly due to rash and negligent driving a truck having registration No.PIJ-6671 (hereinafter referred to as the offending truck) by Harnek Singh – respondent No.1, Smt.Kanta, sister of the deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. respondent No.1 - Harnek Singh – driver, respondent No.2 – Tarsem Singh – owner and respondent No.3 – Oriental Insurance

Co.Ltd. - insurer of the offending truck.

In the said claim petition, the claimant had also arrayed Veena wife of Sardari Lal as proforma respondent. That claim petition was allowed by Motor Accidents Claims Tribunal, Jalandhar and compensation of Rs.1,17,000/- was awarded to the claimant on account of death of Raju @ Naresh Kumar to be paid by respondents No.1 and 3 jointly and severally along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization.

Seeking enhancement of compensation awarded by the Tribunal, the petitioner/claimant had filed an appeal before this Court, notice of which was given to the respondents, who were duly served. However, only respondent No.3 - Insurance company put in appearance through counsel.

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

Learned counsel for the insurance company has contended that the appellant/claimant being sister of the deceased is not his legal representative and she was not dependent upon his earnings, as such she was not entitled to file a claim petition on account of death of her brother Raju @ Naresh Kumar. In support of her such contention, she has referred to authority ***Manjuri Bera Versus Oriental Insurance Co. Ltd. and another, 2007 ACJ 1279*** by the Apex Court. In another authority relied upon by her ***Ranjana Prakash and others Versus Divisional Manager, New India Assurance Co. Ltd. and another, 2011 ACJ 2418***, it was observed by the Apex Court that the Appellate Court could have passed order, which ought to have been passed by the trial Court to do complete justice between the parties even if the claimants had not filed any appeal or cross-objection.

On the other hand, learned counsel for the appellant has contended that it is specific case of the claimant that her husband had expired and deceased Raju @ Naresh Kumar being her brother, who was earlier running a tea stall along with her deceased husband used to give his earnings to her. She, while appearing as PW1 has stated so, in that way, she was dependent upon earnings of the deceased and was his legal heir and legal representative. He submitted that in authority referred to by learned counsel for the Insurance Company ***Manjuri Bera Versus Oriental Insurance Co. Ltd. and another***(supra), the Apex Court had observed that a person, who may or may not be legal heir competent to inherit the property of the deceased but can represent the estate of the deceased person and it includes heirs as well as persons, who represent the estate even without title. In that way, claimant Kanta was well within her rights to file the claim petition and the Tribunal was justified in granting compensation to her.

After hearing the rival contentions, I find that the objection raised by the learned counsel for the Insurance Company lacks merit. The version set up by the claimant that the deceased used to support her financially seems convincing and plausible. The authorities referred to by learned counsel for the Insurance Company are not applicable. The authority ***Manjuri Bera Versus Oriental Insurance Co. Ltd. and another*** (supra) was with regard to a married daughter of the deceased.

Here is a case of a widowed sister and not a married daughter. Therefore, this authority does not help the Insurance Company much, rather the observations made therein with regard to definition of legal representative come to help of the claimant. As regards the second authority i.e. ***Ranjana Prakash and others Versus Divisional Manager, New India Assurance Co. Ltd. and another*** (supra), there could not be any dispute with the proposition of law laid down in the said authority but here the insurance company had taken such objection before the Tribunal, which was rejected by the Tribunal giving valid and convincing reasons. If the Insurance Company was so aggrieved, it could have filed separate appeal against the award or at least filed cross-objections, which was not so done. However, objections taken by the Insurance Company are being dealt with in detail while disposing of the appeal filed by the claimant.

Learned counsel for the appellant has referred to authority ***Kishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil) 276*** by the Apex Court wherein criteria for award of compensation in case of death of children in motor accident in terms of Section 163-A, Second Schedule has been discussed and compensation has been awarded.

The Tribunal has taken the age of the deceased to be 15 years and referring to deposition of claimant appearing as AW1 that deceased was very active and energetic and was running a tea stall with her husband, in that way they were earning Rs.12,000 to Rs.13,000/- per month, out of which her husband used to pay Rs.3,000/- to Rs.4,000/- to the deceased, which the deceased was paying to her, as well as testimony of PW2 Mohan Lal, who in his affidavit had stated that husband of the petitioner namely Sukhdev Lal was his cousin, who was running a tea stall along with Raju @ Naresh Kumar brother of the claimant; that they were earning Rs.12,000/- to Rs.13,000/- per month, out of which Sukhdev Lal used to pay Rs.3,000/- to Rs.4,000/- to the deceased Raju, which he would pay to the petitioner/claimant, took monthly income of the deceased to be Rs.1,000/- per month. Taking that he was spending 50% of that amount for himself and contributing Rs.500/- per month towards petitioner, calculated his total annual contribution to be Rs.6,000/- and considering his age applied multiplier of 18 and compensation worked out to Rs.1,08,000/-. The amount of Rs.9,000/- was awarded towards funeral charges making total compensation of Rs.1,17,000/-.

On appreciation of evidence, the Tribunal has taken the deceased to be earning Rs.1,000/- per month. The accident relates to the year 2002. The claimant had led evidence though oral to show that a sum of Rs.3,000/- to Rs.4,000/- was being paid to the deceased but then it is to be kept in mind that in the normal course, the deceased would have got married and raised his own family and his contribution to the claimant might or might not have continued. Keeping in view the fact that he was a teenager and had left his education, there were not much chances of his being highly successful and financially sound. It may be mentioned here that while deciding a petition under Section 163-A of the Motor Vehicles Act, notional income for compensation to those persons, who had no income prior to the accident, it is taken to be Rs.15,000/- per annum. Even if it is taken that there is no cogent and convincing evidence with regard to the deceased working at tea stall or being paid Rs.3,000/- to Rs.4,000/-

per month then his notional income can be taken to be Rs.15,000/-per annum. Since the deceased was unmarried, deduction of 50% could be made towards his personal expenses leaving balance as Rs.7,500/- per annum. As per schedule in case of death of a person up to 15 years, multiplier of 18 is to be applied. Doing that the compensation comes out to Rs.1,35,000/- (75,00 x 18). Under the conventional heads, the claimant is entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate as held in authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009.***

The total compensation comes out to Rs.1,65,000/-(1,35,000 + 30,000).

The Tribunal has awarded a total sum of Rs.1,17,000/- as compensation.

In that way, the enhanced amount comes to Rs.48,000/- (1,65,000 - 1,17,000). The appellant/claimant shall be entitled to recover the enhanced amount from respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment.

With such modification, the appeal is allowed partly.

25.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No