IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6336-2011 (O&M)
Date of decision: 15.03.2019

Balwinder Kaur and others

...Appellants

Versus

Ram Sarup and others

...Respondents

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

Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. R.C. Kapoor, Advocate for respondent No.3.

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H.S. MADAAN, J. (Oral)

On account of death of one Mohinder Singh, in a motor vehicular accident, which took place on 14.12.2007 at about 6 P.M., in the area of Siswan Road, Police Station Kurali, statedly on account of rash and negligent driving of Tipper Truck No.HR-55A-2353 by respondent No.1-Ram Sarup, his legal heirs i.e. his wife-Smt. Balwinder Kaur, aged 42 years and three minor sons, namely Ravinder Singh, aged 16 years, Jaspal Singh, aged 13 years, Akashdeep Singh, aged 11 years, besides two minor daughters, namely, Jaswinder Kaur, aged 15 years and Lavpreet Kaur aged 11 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, impleading Ram Sarup-driver, Gurinder Singh-owner and National Insurance Company Ltd., Chandigarh-insurer of truck in question as respondents.

Notice of the claim petition was given to the respondents who put in appearance. Respondent Nos. 1 & 2 filed a joint written statement, denying the factum of accident having taken place involving Tipper Truck No.HR-55A-2353, while praying for dismissal of the claim petition.

Respondent No.3-Insurance Company in the written statement filed by it also denied that the truck was involved in the accident in which Mohinder Singh had lost his life. Insurance Company denied its liability to pay compensation to the claimants taking various legal objections and prayed for dismissal of the claim petition. No replication was filed.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident caused due to rash and negligent driving of vehicle No.HR-55A-2353 by respondent No.1, if so, whether Mohinder Singh died due to injuries suffered by him in accident in question? OPP.
2. If issue No.1 is decided in favour of claimants, whether claimants are entitled for any compensation, if so, how much and from whom? OPP.
3. Whether respondent No.1 was not holding valid and effective driving licence at the time of accident, if so, its effect? OPR-3.

Both the parties led evidence in support of their respective claims.

During the course of evidence, Balwinder Kaur-claimant

No.1 got her statement recorded as PW-1, besides examining Swaran Singh as PW-2.

In rebuttal, respondents examined Mandeep Singh as RW-1, Sarvesh Kumar as RW-2 and Rattan Singh as RW-3.

After hearing arguments, the Tribunal decided issues No. 1 & 2 in favour of claimants and against the respondents, whereas, issue No.3 was decided against respondent No.3.

As a result of findings on issues, compensation of Rs.19,48,316/- was awarded as per details below:-

1	Loss of dependency	Rs.19,28,316
2.	Transportation & Last Rites expenses	Rs.10,000
3.	Compensation on account of consortium	Rs.10,000
	Total	Rs.19,48,316

The claimants were awarded interest @ 7.5 % p.a., on the amount. The other terms & conditions with regard to apportionment of compensation are duly incorporated in the award dated 10.05.2011.

Feeling dissatisfied with the amount of compensation awarded to them, the claimants have approached this Court, by way of filing the present appeal, notice of which was given to respondent No.3 only, which has put in appearance and offering a contest.

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

Learned counsel for the appellants has contended that the claimants had examined PW-2 Swaran Singh, Senior Assistant, Economic Statistical Organization, Punjab Government, Chandigarh who had brought the service book of deceased Mohinder Singh, stating that as per record, his date of birth was 05.06.1960. Mohinder Singh was working as peon in their office. He had proved salary certificate of deceased as per un-revised scale as Ex. P6 and as per revised scale according to 6th Pay Commission as Ex.P7, stating that both the scales were correct as per record maintained in the office. In terms of salary certificate Ex.P6, monthly income of deceased was Rs.13,148/- in the un-revised scale, whereas, in accordance with salary certificate Ex.P7, the monthly income was Rs.14879/- in revised scale as per recommendations of the 6th Pay Commission. However, the Tribunal ignoring such certificate Ex.P7 has taken the monthly income of deceased to be Rs.13,148/- and from that amount, had wrongly deducted allowances i.e. City Compensatory Allowance of Rs.120/-, Fixed Monthly Allowance of Rs.350/-, taking income of deceased to be Rs.12,678/- per month.

In support of her contentions, learned counsel for the appellant has referred to judgment by a Co-ordinate Bench of this Court i.e. ***Sona Devi and Ors. Versus Rajinder Kumar and Ors., 2018(2) RCR (Civil) 948*** wherein it was observed that when there was revision of pay scales immediately after death of deceased employee, made applicable with retrospective effect, employees were entitled to arrears from back date, earning of deceased has to be determined in the revised pay scale. She has further referred to authority ***Sunil Sharma and others Versus***

Bachitar Singh and others, 2011(2) ACJ 1441 by the Apex Court wherein it was observed that when deceased was in Govt. service, his income be assessed on the basis of gross salary without making deductions on account of HRA, CCA and medical allowance, EPF and GIS contribution. She has further referred to authority ***Vimal Kanwar and others Versus Kishore Dan and others, 2013(3) Recent Apex Judgments (R.A.J.) 446*** by the Apex Court in that respect.

On the other hand, learned counsel for the insurance company had argued that since son of the deceased had got appointment on compassionate basis and certain benefits have been released to legal heirs of the deceased on account of death of the deceased, such facts should have been taken into consideration by the Tribunal, which it has not done. Therefore, the compensation awarded is liable to be reduced. In support of his that contention, he has referred to authority ***Bhakra Beas Management Board Versus Kanta Aggarwal and others, 2008(3) RCR (Civil)733*** by the Apex Court wherein it was observed that when wife of the deceased had got compassionate appointment on salary of Rs.4,700/- per month then benefits which the claimant received on account of death or injury have to be duly considered while fixing the compensation.

This argument of learned counsel for Insurance Company was countered by learned counsel for the appellants contending that in a recent judgment ***National Insurance Co. Ltd. Versus Rekhaben and Ors., 2017(3) RCR(Civil)289***, the Apex Court observed that in case of death of a person in motor accident when such person was an employee of Electricity Board and further his wife was given compassionate employment by the employer of the deceased with a regular salary, the benefits therefrom cannot be deducted from the compensation payable on account of death of the deceased.

Therefore, I find that the Tribunal fell in error in not taking the revised salary of the deceased as per salary slip Ex.P7. Therefore, monthly income of the deceased is taken to be Rs.14,879/- in terms of salary slip Ex.P7.

Keeping in view the fact that the deceased was having a permanent job and his age and in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 30% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.14,879 + 4,463 = Rs.19,342/-.

Considering the number of dependents upon the income of the deceased deduction of 1/4th should be made in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** . Doing that the dependency of claimants comes out to Rs.14,507/- per month and annual dependency Rs.14,507 x 12 = Rs.1,74,084/-.

The Tribunal has used multiplier of 13, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,74,084 x 13 = 22,63,092/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants 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. 22,63,092 + 70,000 = 23,33,092/-.

The Tribunal has awarded compensation of Rs.19,48,316/-.

In this way, the enhanced amount comes out to Rs.3,84,776/- (23,33,092 - 19,48,316). 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.3,84,776/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

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

15.03.2019 **(H.S. MADAAN)**
sumit.k/brij **JUDGE**

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