IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 1581 of 2013 (O&M)
DATE OF DECISION :- December 05, 2019

Ratneshwar and another ...**Appellants**

Versus

Mukesh Kumar and others ...**Respondents**

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

Present:- Mr. Arun Dulgach, Advocate
for Mr. Abhimanyu Singh, Advocate for the appellants.

Mr. Amit Jain, Advocate for respondent No. 1.

Mr. Rajbir Singh, Advocate for respondent No. 3.

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Briefly stated the facts of the case are that on account of death of Sumit, aged about 21 years working as a mechanic, in a motor vehicular accident, which took place on 4.1.2011 at about 4.00 P.M., statedly on account of rash and negligent driving of Eicher Tractor bearing registration No. HR-14A-1382 by respondent No. 1 Mukesh Kumar, legal heirs/legal representatives of the deceased, namely his father Sh. Ratneshwar, aged about 58 years and mother Smt. Chinta Devi, aged about 55 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Mukesh Kumar-driver, Arjun Singh-owner and Bharti AXA General Insurance Co. Ltd, Gurgaon-insurer of Eicher Tractor bearing registration No. HR-14A-1382 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.20 lacs.

On being put to notice all the three respondents appeared and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, the Motor Accidents Claims Tribunal Gurgaon vide dated 30.7.2012 came to the conclusion that the accident in question was caused by respondent No. 1 Mukesh Kumar while driving the offending Tractor in a rash and negligent manner resulting in death of Sumit whereas issue No. 3 was decided with the observation that copy of driving license of respondent No. 1 Mukesh Kumar (Ex. DA) showed that he possessed a effective and valid driving license at the relevant juncture and the insurance policy (Ex.R1) showed that the vehicle in question was insured at the time of accident. However, on the basis of previous insurance policy No. 109000477246 issued by Reliance GIC Limited, the policy in question was found fake vide report Ex.R5 and was found in the name of other insured thereby showing that policy was got issued in collusion with respondent No. 2 or the agent of respondent No. 3. The Tribunal had concluded that in the said scenario respondent No. 3 Insurance Company could not be held liable but at the same time it could not be ignored that due to fault of insurer and insured the 3rd party could not be allowed to suffer. Therefore, respondents No. 1 and 2 were held liable jointly and severally to pay the compensation. To meet the interest of justice it was directed that firstly Insurance Company shall pay the compensation amount then it may recover the same from respondents No. 1 and 2 in accordance with law. While quantifying the compensation by discussion in issue no. 2 the Tribunal has taken age of the deceased which is 21 years and in absence of any cogent and convincing evidence that he was working as a mechanic the minimum wages prevalent by the State of Haryana at the relevant time for an unskilled worker to the tune of Rs.4200/- were taken. I do not find anything wrong with the Tribunal in doing so. However, the Tribunal had not added any amount towards future prospects. With such passage of time the income of deceased was expected to increase.

In terms of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** where age of the deceased was below 40 years then addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased is worked out to be Rs.5880/-(4200 + 1680). Since the deceased was a bachelor, 50% of the amount is to be deducted towards his personal and living expenses. Doing that the dependency of the claimants comes out to Rs.2940/-, annual dependency comes out to Rs.35,280/-(2940 x 12). The Tribunal has wrongly used multiplier of 8 considering the ages of the claimants whereas the proper criteria should have been to take into consideration the age of the deceased himself. The multiplier of 18 should be used. In that way, the total compensation comes out to Rs.6,35,040(35280 x 18). The claimants are entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate. In that way the total compensation comes out to Rs.6,65,040/-(6,35,040 + 30,000). The Tribunal has awarded compensation of Rs.2,21,600/- to the claimants. Therefore, the additional compensation comes out to Rs.4,43,440/-(6,65,040 - 2,21,600) which is to be apportioned between the claimants equally in cash. They shall be entitled to get interest at the rate of 7.5% per annum on the additional compensation from the date of filing of the petition till actual realization.

With such modification, the appeal is allowed partly.

The direction issued by the Tribunal that the Insurance Company would pay this amount to the claimants at the first instance and then could recover the same from respondents No. 1 and 2 shall remain in operation.

Though learned counsel for respondents No. 1 and 2 has contended that report Ex.R5 has not been proved in accordance with law, therefore, recovery rights were wrongly granted by the Tribunal and such direction be withdrawn. But as rightly pointed out by learned counsel for the Insurance Company such respondents have neither filed any separate appeal nor cross objections, therefore, there is no reason to withdraw such direction.

(H.S. MADAAN)
JUDGE

December 05, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No