IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2999-2013(O&M)
Date of decision:-13.5.2019

Surender Singh and another

...Appellants

Versus

Vikram and others

...Respondents

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

Present: Mr.V.K. Sheoran, Advocate
for the appellants.

Mr.D.K. Dogra, Advocate
for respondent No.3.

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H.S. MADAAN, J.

This is claimants appeal for enhancement of compensation awarded by Motor Accident Claims Tribunal, Bhiwani vide Award dated 4.3.2013.

Briefly stated, facts of the case are that on 6.8.2011 at about 11:00 before noon, Balbir Singh – deceased along with his sons namely Surender Singh and Sandeep Singh was returning home from his fields on foot; that when they reached near the fields of Partap Singh, in the meanwhile a motorcycle make Hero Honda bearing registration No.HR-19F-4583 (hereinafter referred to as the offending vehicle) being driven in a rash and negligent manner by respondent No.1 – Vikram came from village Singhani side and hit Balbir Singh from behind, as a result Balbir

Singh was dragged along with the motorcycle to some distance on the road and he sustained grievous and multiple injuries on various parts of his body; that on being inquired, the motorcyclist told his name as Vikram son of Ramesh, resident of village Dhab Dhani, Tehsil Tosham, District Bhiwani; that Balbir Singh injured was taken to a private hospital at Loharu for treatment but keeping in view his serious condition, he was referred to CHC, Loharu and from where he was referred to General Hospital, Bhiwani; however, on reaching that hospital, Balbir Singh was declared brought dead; that FIR No.127 dated 6.8.2011 for the offences under Sections 279/304-A IPC with regard to the accident was registered with Police Station Loharu. According to the petitioners/claimants, who are sons of Balbir Singh - deceased, Balbir Singh was aged 56 years and he was owner of 15 acres of land, in addition to that he was running a milk dairy of 10 buffaloes and in that way, the total income of the deceased was Rs.30,000/- per month. The claimants prayed for grant of compensation of Rs.25 lacs by way of filing a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Vikram – driver, Vinod – owner and United India Insurance Company Ltd. - insurer of the offending vehicle.

On notice all the three respondents appeared and filed written replies. Respondents No.1 and 2 filed a joint written reply, whereas respondent No.3 – insurance company filed a separate written reply.

In the joint written reply submitted on behalf of respondents No.1 and 2, they alleged that respondent No.1 has been falsely challaned by the police in collusion with the claimants and as a matter of fact, it was a case of hit and run accident; that the motorcycle in question was duly insured with respondent No.3 – insurance company at the relevant time. Such respondents also took up various legal objections with regard to maintainability of the claim petition; locus standi of the claimants to bring the same and petition being bad for non-joinder and misjoinder of the necessary parties.

In the written reply submitted on behalf of respondent No.3 – insurance company, it is alleged that the claimants had filed the claim petition in collusion with respondents No.1 and 2 and no intimation of the accident was given to it; that the compensation claimed by the claimants was on higher side. It also took various legal objections including one that the respondent No.1 was not having any valid and effective driving licence at the time of accident.

All the three respondents prayed for dismissal of the claim petition.

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

1. Whether accident took place on 6.8.2011 at about 11:00 AM caused death of Balbir son of Chandgi due to rash and negligent driving of Motorcycle bearing registration no.HR-19F-4583 by respondent No.1?OPP.
2. If issue no.1 is proved, whether the petitioners are entitled for compensation, if so to what amount and from whom? OPP.
3. Whether petition is not maintainable in the present form? OPR.
4. Whether the petitioners have no locus standi or cause of action to

file the present petition? OPR.

5. Whether the driver of the offending vehicle was not holding a valid and effective driving licence on the date of accident? OPR-2.
6. Whether the petition is bad on account of mis-joinder of parties and non-joinder of parties? OPR.
7. Relief.

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

In support of their case, the claimant/petitioner No.1-Surender Singh had got recorded his statement as PW1 and tendered into evidence certain documents.

On the other hand, respondents No.1 had tendered in evidence documents i.e. copy of driving licence as Mark R1, copy of registration certificate as Mark R2, copy of insurance policy as Mark R3 and copy of ration card as Ex.D1, whereas respondent No.3 insurance company tendered in evidence copy of insurance policy as Ex.R1.

After hearing the learned counsel for the parties, the Tribunal decided issues No.1 and 2 in favour of the claimants and against the respondents, issues No.3, 4 and 6 against the respondents, issue No.5 against the insurance company. Resultantly, while accepting the claim petition partly vide Award dated 4.3.2013, the Tribunal awarded compensation of Rs.2,03,200/- to the petitioners/claimants payable by all the respondents jointly and severally along with interest @ 6% per annum from the date of filing of the claim petition till realization of the amount.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation.

Notice of the appeal was given to respondent – insurance company, which put in appearance through counsel.

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

The Tribunal has taken the monthly income of the deceased to be Rs.4,600/-. However, I find that the amount so taken is on the lower side. The deceased being an agriculturist as revealed from the jamabandies Ex.P2 and Ex.P3 was managing the land, although the same is shown to have been inherited by his sons, the claimants now. However, his contribution for looking after and managing the land has to be taken into consideration. In my considered view, it would be proper and appropriate if monthly income of the deceased is taken to be Rs.6,000/- considering that the accident had taken place in the year 2011.

The Tribunal considered the age of deceased to be 61 years keeping in view his age mentioned in the postmortem report Ex.P8 to be 62 years and the fact that as per admission of PW1 Surender Singh in the cross-examination that the deceased was drawing old age pension for last 12 months before the accident, which is granted at the age of 60 years. The Tribunal is not shown to have committed any error in doing so. For that very reason, no addition to his income towards future prospects is to be made.

The Tribunal has made deduction of 50% of income of the deceased towards his personal expenses. However, I find that the Tribunal fell in error in doing so. The deceased residing with his family including his sons - the claimants is expected to spend money for the family and merely because his sons have attained age of majority does not mean that their deceased father had stopped spending money for them. Even otherwise, in the old age needs of a person get minimized and expenses borne on one self comes out to the minimum. Therefore, in my considered view deduction of 1/3rd is to be made towards personal expenses of the deceased. Doing that the dependency of claimants comes out to Rs.4,000/- per month, annual dependency comes out to Rs.4,000 x 12 = Rs.48,000/-.

Keeping in view the authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra), multiplier of 7 would be appropriate. Doing that the compensation payable comes out to Rs.48,000 x 7 = 3,36,000/-.

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 and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 3,36,000 + 30,000 = 3,66,000/-.

The Tribunal has awarded compensation of Rs.2,03,000/-.

In this way, the enhanced amount comes out to Rs.1,63,000/- (3,66,000 - 2,03,000). 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.1,63,000/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

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

13.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No