IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1468 of 2014 (O&M)
Date of decision: 16.11.2019

Smt. Maryam and others

....Appellants

Versus

Sube Khan and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashish Gupta, Advocate, for the appellants.

Mr. Arjun Atri, Advocate, for respondent No.1.

Mr. Banni Thomas, Advocate, for respondent No.2-Insurance Company.

***

RITU BAHRI J. (Oral)

This appeal is directed against the Award dated 18.11.2013 passed by the Motor Accident Claims Tribunal, Nuh (hereinafter referred to as 'the Tribunal') dismissing the claim petition filed by the claimants-appellants seeking compensation on account of death of Hassan @ Ali Hassan in a motor vehicular accident which took place on 22.12.2012. Appellant No. 1 is mother, appellant Nos.2 to 4 are brothers & sister and proforma respondent No.3 is widow of deceased Hassan @ Ali Hassan.

Brief facts of the case are that on 22.12.2012, at about 5.00 P.M., Hassan @ Ali Hassan (since deceased) along with Khurshid was going from village Singar to Jurhera on a motorcycle No. HR-28-C-8291. The said motorcycle was being driven by Hassan @ Ali Hassan. When they reached near T-point, Dodoli, in the meantime, a motorcycle bearing registration No. HR-28-C-6603 being driven in a rash and negligent manner by its driver, came from the side of Dodoli and struck against the motorcycle of Hassan @ Ali Hassan, as a result of which, he (Hassan @ Ali Hassan) and Khurshid suffered serious and multiple injuries. They were shifted to CHC, Punhana, from where, Hassan @ Ali Hassan was referred to Safdarjung Hospital, New Delhi, where he succumbed to the injuries during treatment. With regard to the accident, FIR under Section 279/304-A IPC was registered at Police Station, Punhana. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

On the basis of the evidence led by the parties, accident information report Ex.P3 and FIR Mark-A, the Tribunal came to a conclusion that the vehicle bearing No. HR-28-C-8291, driven by deceased Hassan @ Ali Hassan and another vehicle bearing No. HR-28-C-6603 were involved in the accident. It was observed that the accident had taken place out of the use of those vehicles. It was further observed that FIR No.507 dated 23.12.2012, under Sections 279/304-A IPC had been registered against deceased Hassan @ Ali Hassan himself. While relying upon a judgment passed by Hon'ble the Supreme Court in ***National Insurance Company Ltd. vs. Sinitha and others,*** 2012SLJ 1, the Tribunal has held that since the deceased himself was negligent in driving his motorcycle, neither the insurance company nor the owner was liable to pay the compensation to the claimants. With these observations, claim petition filed by claimants (present appellants) was dismissed. Feeling dissatisfied with the impugned award, claimant-appellants filed the present appeal.

Learned counsel for the appellants has referred to the judgment passed by Hon'ble the Supreme Court in ***United India Insurance Co. Ltd. vs. Sunil Kumar and another,*** 2018 (1) RCR (Civil) 680, whereby while referring to the decision given in ***Sinitha's*** case (supra), it has been held that the question of negligence is not to be gone into while entertaining a petition under Section 163-A of the Act and this ground is not available to the insurer as a defence in a proceeding under Section 163-A.

Keeping in view the aforesaid judgment, the impugned award/judgment dated 18.11.2013 is set aside. Now, the Court proceeds to assess the compensation as per structured formula prescribed in the Second Schedule of the Act.

The first question to be decided is, 'what was the age of deceased-Hassan @ Ali Hassan, who died in a road accident, which took place on 22.12.2012. A perusal of the record shows that in the claim petition, age of the deceased has been mentioned as 22 years. This fact has not been disputed by respondent No.2-Insurance Company in its written statement. Hence, the age of deceased, at the time of death/accident, was 22 years and his income, for calculating the compensation, is being taken as Rs.3300/- per month. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed as per Second Schedule (Section 163-A) of the Act, as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.3300/- per month
(ii)	1/3rd of (i) above is deducted as personal expenses of the deceased	3300 – 1100 = Rs.2200/-
(iii)	Compensation after multiplier of 18 is applied	Rs.2200/- x 12 x 18 = Rs.4,75,200/-
(iv)	Compensation under the conventional heads (as per Second Schedule)	Rs.9500/-

(v)	**TOTAL COMPENSATION AWARDED**	**Rs.4,84,700/-**

Total amount of compensation of **Rs.4,84,700/-** shall be payable within a period of four weeks from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others,*** Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019). Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. It is made clear that respondent No.2-Insurance Company, being insurer of the offending vehicle, shall make payment of the compensation to the claimants.

Appeal stands allowed in the aforesaid terms.

(RITU BAHRI)
JUDGE

16.11.2019
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No