

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3535 of 2013 (O&M)

Date of decision : 3.4.2019

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Sandeep Kaur and another

.....Appellants

vs.

Bahadur Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sanjeev Goyal, Advocate for the appellants

Mr. Banni Thomas, Advocate for respondent No. 3

...

H. S. Madaan, J.

On account of death of Lakhwinder Singh @ Lakha, in a motor vehicular accident, which took place on 15.4.2011, at about 9.00 P.M. on Patiala-Patran road, statedly on account of rash and negligent driving of TATA207 vehicle, bearing registration No. PB-12H-5985, by respondent No.1 Bahadur Singh, legal representatives of deceased, namely, his widow Smt. Sandeep Kaur, mother Smt. Amarjit Kaur and father Gamdur Singh, brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents, i.e. Bahadur Singh – driver, Ramanpreet Singh – owner and the Oriental Insurance Company Limited, Sangrur – insurer of the said TATA 207 vehicle bearing registration No. PB-12H-5985

(hereinafter referred to as 'the offending vehicle').

On getting notice, only respondents No. 2 and 3 put in appearance through counsel and offered a contest.

The claim petition was accepted by the Motor Accidents Claims Tribunal, Sangrur, vide award dated 1.12.2012 and compensation of Rs.3,91,620/- with interest @ 6% per annum was awarded to the claimants, payable by respondents No. 1 to 3 jointly and severally. The petitioners-claimants being of the view that the compensation awarded to them was on lower side, have approached this Court, by way of filing present appeal, notice of which was given to respondent No.3 – Insurance company only, which has put in appearance through counsel.

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

The Tribunal has taken age of the deceased to be 24 years, considering such age mentioned in the post mortem report of the deceased Exhibit A-2. The monthly income of the deceased has been taken to be Rs.4,104/-. An addition of 30% has been allowed towards future prospects. However, considering age of the deceased, in view of the judgment *National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009*, by a Constitutional Bench of the Apex Court, when the deceased was self employed or on a fixed salary, an addition of 40% on the established income should be made, where the deceased was below the age of 40 years. Doing that, the monthly income of the deceased comes out to Rs.4,104 +

1,640 = Rs.5,744/-. The Tribunal has wrongly made addition of 30% only instead of 40%.

1/3rd of the amount has rightly been deducted towards personal expenses of the deceased. Accordingly, by doing so, the monthly dependency of the claimants comes out to Rs.5,744 – 1,914 = Rs.3,830/-. In this way, the annual dependency is worked out to Rs.3,830 X 12 = Rs.45,960/-.

The Tribunal has properly used the multiplier of 18. By applying that multiplier the total compensation is arrived at Rs.45,960 x 18 = Rs.8,27,280/-

Then under the conventional Heads, the Tribunal has awarded a sum of Rs.5,000/- on account of loss of estate, Rs.5,000/- on account of funeral expenses and Rs.5,000/- on account of loss of consortium. However, as per authority in *Pranay Sethi's case (Supra)*, under the conventional Heads, the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium, Rs.15,000/- towards funeral expenses, i.e. a total sum of Rs.70,000/-(Rs.15,000 + 40,000 + 15,000), under the Conventional Heads.

Adding the said amount, the compensation payable to the claimants, comes out to Rs.8,27,280 + Rs.70,000 = 8,97,280/-.

However, the Tribunal has deducted 50% of the amount wrongly by coming to the conclusion that it was a case of contributory negligence, when from the record, the same is not borne out.

As per the case of the claimants, on 15.4.2011, the deceased was returning home on his motorcycle, make Hero Honda Splendor, bearing registration No. PB-44B-4920, driven by him on correct side of the road and on a moderate speed. At about 9.00 P.M., when he had reached near Old Octroi Post, Patran on Patiala – Patran road, a vehicle make TATA 207, bearing registration No. PB-12H-5985, being driven in a very rash and negligent manner, by respondent No.1 Bahadur Singh, came from the opposite side and going on wrong side of the road, hit the motorcycle of the deceased. As a result, he fell down and received multiple injuries. An FIR regarding the incident was lodged by brother of the deceased Satnam Singh, who had seen the accident. That FIR No. 94 dated 16.4.2011, for offence under Section 304-A IPC, was registered at Police Station, Patran.

The claimants had examined Satnam Singh, eye witness as AW-2, who had categorically stated that respondent No.1 Bahadur Singh was author of the accident by rash and negligent driving of the offending vehicle. In addition to producing oral evidence, the claimants had placed on record, attested copy of FIR Exhibit A-1, attested copy of post mortem report Exhibit A-2, certified copy of charge sheet Exhibit A-3, certified copy of report under Section 173 Cr.P.C. Exhibit A-4, certified copy of mechanical test report Exhibit A-5, certified copy of memorandum of recovery of vehicle Exhibit A-6 and copy of jamabandi for the year 2009-10 Exhibit A-7.

Thus it comes out that respondent No.1 had caused the accident by his rash and negligent driving of the offending vehicle.

He was challaned in a criminal case and sent up to face trial, where formal charge has been framed against him. Respondent No.1 had not appeared before the Tribunal, to offer a contest. No evidence is there in rebuttal to the effect that respondent No.1 was not responsible for the accident or that deceased himself was at fault. None of the other two appearing respondents have adduced any evidence in that regard. Rather both the respondents closed their evidence after tendering documents. It being so, the Tribunal, just on the basis of conjectures and guess work, made it a case of contributory negligence when neither there was any plea by any of the respondents, nor evidence on record to show that.

The Tribunal mis-appraised the evidence and by wrong understanding of the facts and wrong interpretation of law, observing that when the vehicles under reference were coming from opposite sides and they collided with each other, head on, drivers of both the vehicles have to be held equally responsible for causing the accident. But in the instant case, it was specific plea of the claimants that the deceased was going on his correct side of the road at a moderate speed and respondent No.1 by bringing the offending vehicle on wrong side, driving it in a rash and negligent manner, hit the motorcycle. Under the circumstances, the deceased could not be faulted on any account in happening of the mishap. The verdict given by the Tribunal on issue No.1 is wrong, as such that issue is decided against the respondents and in favour of the claimants, holding that Lakhwinder Singh @ Lakha died in a motor vehicular accident,

caused on account of rash and negligent driving of TATA207 bearing registration No. PB-12H-5985, belonging to respondent No.2 and insured with respondent No.3, by respondent No.1 on 15.4.2011 at about 9.00 p.m. on Patiala – Patran road and it is not a case of contributory negligence.

Resultantly, the appeal filed by the claimants is accepted and additional compensation of Rs.8,97,280 - 3,91,620 =Rs.5,05,660/- is awarded to the claimants on the same terms and conditions as given in the original award with interest @ 7.5% per annum from the date of filing of appeal, till actual realization.

3.4.2019
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(H.S. Madaan)
Judge

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