IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 219

FAO-3761-2014 (O&M) and
XOBJ-172-CII-2015
Date of decision : 22.04.2019

Naresh Chand and another ..... Appellants

VERSUS

Saleem and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. J. S. Hooda, Advocate, for the appellants.

Mr. Johan Kumar, Advocate,
for respondents No. 1 and 2/cross objectors.

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

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DEEPAK SIBAL, J. (ORAL)

The present order shall dispose of an appeal preferred by the owner and the driver of a Jeep bearing registration No. HR-18-8880 (for short, the offending vehicle) which caused the accident leading to the death of Munfida as also the cross objections filed by the claimants against the award dated 12.08.2013, passed by the Motor Accident Claims Tribunal, Palwal (for short, the Tribunal).

The facts, in brief, are that on 07.12.2010 Sahun and Munfida (since deceased) were going on a motorcycle bearing registration No. RJ-02-SP-0757. The motorcycle was being driven by Sahun. At about 3:00 p.m. when they reached near village Maroda, Tehsil Nuh, District Mewat, the offending vehicle hit their motorcycle from behind, resulting in Munfida's death at the spot. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) before the Tribunal which after concluding that the offending vehicle was being driven in a rash and negligent manner went on to assess the compensation which according to it was payable to the claimants. The Tribunal being of the view that the driving licence of the driver of the offending vehicle not being genuine imposed the liability to pay the compensation upon the owner and the driver of the offending vehicle who are in appeal to challenge such findings. The claimants have also filed cross objections seeking enhancement in the compensation awarded by the Tribunal.

Learned counsel for the parties have been heard.

As per Section 173 of the Act no appeal can be preferred before this Court against an award of a Tribunal unless the appellant(s) have deposited ₹25,000/- or 50% of the amount so awarded, whichever is less. In the instant appeal the appellants have not deposited the aforesaid statutory amount. In fact, an application had been filed by them seeking exemption from payment of such amount which was dismissed on 16.07.2015 with a further direction to them to deposit the statutory amount within a month from the date of the order. Even after nearly four years of the passing of aforesaid order, the statutory deposit has not been made. The appeal is therefore, not maintainable.

Even otherwise, the record reveals that appellant No. 2 had produced his driving licence before the Tribunal as Ex. R2. Thereafter both the appellants and their counsel absented from the proceedings before the Tribunal and therefore on 11.07.2013 were proceeded against ex parte. The driving licence so produced by appellant No. 2 was got verified by respondent No. 3-Insurance Company. Such verification found the licence to be not genuine as the same had been issued in the name of one Pardeep whereas the name of appellant No. 2 is Shiv Ram. Respondent No. 3 had proved such verification by producing the Clerk of the Licensing Authority, Fatehgarh, District Farukhabad (UP) as RW1, who had categorically deposed before the Tribunal that Ex.R2, which was the driving licence produced by appellant No. 2, was issued in the name of one Pardeep and not appellant No. 2.

Further, the date of birth of appellant No. 2 as given in the licence produced by him is 23.11.1987 and the date of issuance of the licence is 20.11.2002. Thus, the licence was made when appellant No. 2 was about 15 years of age. This itself makes the licence illegal.

In the light of the above, the appeal is dismissed.

XOBJ-172-CII-2015

Learned counsel for the cross objectors submitted that at the time of her death Munfida was working as a maid servant (labourer) and, therefore, her income was liable to be assessed @ ₹4,000/- per month and not ₹3,600/- as assessed by the Tribunal as according to him the minimum monthly wages as fixed by the State of Haryana at the relevant time were ₹3,953/- per month. He further went on to argue that since the deceased was 23 years of age, multiplier of 17 and not 16 was required to be applied to her assessed income and that the claimants are entitled to "future prospects" @ 40% to the assessed income of the deceased as also to a cumulative sum of ₹70,000/- under the conventional heads.

Learned counsel for the appellants as also counsel for respondent No.3-Insurance Company, in view of the settled position of law, though very fairly admit to the applicability of the multiplier of 17, grant of "future prospects" @ 40% to the assessed income of the deceased and to a cumulative sum of ₹70,000/- under the conventional heads but dispute the claim made before this Court with regard to the income of the deceased. They justified the assessment of the deceased's income @ ₹3,600/- per month as according to them at the time of the accident this was the salary being drawn by a maid servant.

In view of the above consensus as also the law laid down by the Hon'ble Supreme Court in "*National Insurance Company Limited vs. Pranay Sethi and others*" (2017)16 SCC 680 as also in "*Sarla Verma and others vs. Delhi Transport Corporation and another*" (2009)6 SCC 121, the claimants are held entitled to assessment of compensation after applying the multiplier of 17 as also "future prospects" @ 40% to the deceased's income to be assessed hereinafter. Instead of ₹3,500/- granted to them by the Tribunal under the conventional heads, the claimants are also held entitled to a cumulative sum of ₹70,000/-.

So far as the deceased's assessed income is concerned, the fact with regard to the working of the deceased as a maid servant was proved before the Tribunal through the statement of PW-2. No evidence to the contrary was led by either the appellants or the Insurance Company. That being so, as also for the reason that the deceased was an able-bodied young lady, in the opinion of this Court, her income is liable to be assessed at the minimum wages fixed by the State at the relevant time for an unskilled labourer, which in the case in hand, are ₹3,953/- per month and it is so ordered.

The award of the Tribunal is modified in the above terms.

On the above enhanced amount, the claimants are also held entitled to interest @ 6.5% per annum from the date of filing of the claim petition till its realization.

22.04.2019 [DEEPAK SIBAL]
shamsher JUDGE

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