IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2197 of 2015 (O&M)
Date of Decision: 22.08.2019

Surti Devi and others

...... Appellants

Versus

Devender Kumar and other

..... Respondents

*****

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Randeep Singh, Advocate, for the appellants.

None for respondent No.1.

Mr. D.K. Prajapati, Advocate, for respondent No.2.

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JAISHREE THAKUR, J.

1. This appeal has been filed by the claimants for enhancement of compensation awarded by the Tribunal on account of death of Baljeet Singh in a motor vehicular accident. The Tribunal had awarded compensation of ₹4,84,328/-.

2. In brief, the facts are that the claimant-appellants herein, had preferred a claim petition under section 166 of the Motor Vehicles Act, 1988 (in short the ‘Act’) against the respondents alleging that on 30.11.2012, at 9.00/9.30 a.m. Baljeet Singh, deceased

was standing near the house of Jai Chand. Respondent No.1 came there while driving his motorcycle No. HR-05Q-8203 in a rash and negligent manner and hit Baljeet Singh with his motorcycle. As a result of the impact, Baljeet Singh fell down on the road and received multiple grievous injuries. The accident was witnessed by Mahavir Singh. Baljeet Singh was shifted to PGI, Chandigarh where he succumbed to the injuries on 04.12.2012. An FIR No. 509 dated 01.12.2012, under Sections 279, 337 IPC came to be registered in Police Station, Indri, and later on offence under Section 304-A IPC was also added.

3. On notice, respondent No.1 owner and driver of the offending motorcycle, resisted the claim petition by filing his written statement and *inter alia* took preliminary objections that an excessive compensation has been claimed. The claim petition has been filed on false and frivolous grounds in collusion with the police. The accident has not taken place with the offending vehicle and respondent No.1 has been falsely implicated in this case. On merits, all the averments made in the claim petition were denied and dismissal of the claim petition was prayed for.

4. Respondent No.2- The New India Insurance Company Limited with which the motorcycle in question was insured, also resisted the claim of the claimants by filing separate written statement taking preliminary objections that the claimants are estopped by their own act and conduct to file and maintain the claim petition; that the

driver of the alleged insured vehicle was not holding a valid and effective driving licence nor was he entitled to hold it, as such insurance company is not liable to indemnify the insured. Denying all other averments of the claimants, respondent No.2 prayed for dismissal of the claim petition.

5. In this case application under Section 170 of the Motor Vehicles Act, filed by the insurance company was dismissed vide order dated 09.05.2014.

6. From the pleadings of the parties, the Tribunal framed the following issues :-

> *"1. Whether accident in question took place due to rash and negligent driving of motorcycle bearing registratioin No. HR-05Q-8203 by respondent No.1 Devender Kumar and Baljeet Singh died in the said accident?OPP*
>
> *2. Whether the claimants are entitled to compensation. If so, to what amount and from whom? OPP*
>
> *3. Whether the motorcycle in question was being driven against the terms and conditions of the insurance policy as alleged?OPR*
>
> *4. Relief."*

7. The parties led their respective evidence in support of their pleadings and on the basis of the findings, the Tribunal, awarded a sum of ₹ 4,84,328/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization on account of death of Baljeet Singh. Feeling aggrieved, the instant appeal for enhancement of compensation has been filed.

8. Learned counsel for appellants submits that Baljeet Singh died at the age of 55 years and, thus, keeping in view the date of the deceased higher multiplier ought to have been applied while assessing the compensation. He further submits that the compensation awarded to the appellants towards loss of consortium and funeral expenses is inadequate and on the very lower side and no compensation has been awarded on account of love and affection, transportation, loss of estate and future prospects. He, thus, prayed for modification of the award by submitting that increase on account of future prospects should be allowed in terms of the judgment of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009.***

9. On the other hand, learned counsel respondent No.2— Insurance Company argues that just and adequate compensation has been awarded by the Tribunal.

10. I have heard learned counsel for the parties and find that since there was no documentary proof of age other than the post mortem report, the Tribunal has rightly taken the age of the deceased Baljeet Singh as 60 years thus the multiplier of 9, as awarded by the Tribunal, was just and proper. Further the Tribunal has rightly treated him as a labourer and his earning to be ₹ 5,200/- per month since he did not have a permanent shop to run his business of pickles. The Tribunal has rightly deducted the income of the deceased by 1/3rd towards his own living expenses, as he left behind 3 claimants.

Hence, in terms of the judgment rendered by the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009,*** compensation payable to the claimants is re-worked and tabulated as under:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Baljeet Singh
(ii)	Date of accident	30.11.2012
(iii)	Age of the deceased	60 years
(iv)	Monthly income of the deceased	₹ 5,200/-
(v)	10% of (iv) is to be added towards future prospects	(₹ 5200+₹ 520)= ₹ 5,720 per month
(vi)	1/3rd of (v) above deducted towards personal expenses	(₹ 5,720 - ₹ 1,907) = ₹ 3,813/- per month
(vii)	Compensation calculated after applying the multiplier of 9	(₹3,813 X 12 X 9) = ₹ 4,11,804/-
(viii)	Conventional heads i.e. loss of consortium and funeral expenses etc.	₹ 70,000/-
(ix)	Medical expenses	₹ 50,000/-
Total		₹ 5,31,804/-

11. In view of the above, the appeal is allowed and consequently the compensation awarded is enhanced from ₹ 4,84,328/- to ₹ 5,31,804/-.

12. The Insurance Company is directed to release the enhanced compensation in favour of the claimant-appellants with interest @ 7.5% per annum from the date of filing of the petition till realization in terms of the judgment rendered by the Supreme Court in ***Dara Singh @ Dhara Banjara vs. Shyam Singh Varma & Ors., Civil Appeal No. 4528 of 2019 [SLP(C) No. 5720 of 2019]*** decided on 01.05.2019.

13. The award is modified and the appeal is allowed to the above extent.

22.08.2019 **(JAISHREE THAKUR)**
Satyawan **JUDGE**

Whether speaking/reasoned Yes.

Whether reportable No.