IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4440 of 2014 (O&M)
Date of decision : 31.7.2019
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Parwez and others
................Appellants

vs.

Aasu and others
................Respondents

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

Argued by : Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate for the appellants.

None for the respondents.
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H. S. Madaan, J.

On account of death of one Abdul Hamid son of Rasula, aged 46 years, in a motor vehicle accident, which took place on 17.10.2010, at about 4.30 P.M. in the area of approach road of village Sikrohwa, statedly on account of rash and negligent driving of vehicle No. HR-28-A-3296 (hereinafter to be referred as 'the offending vehicle), by Aasu – respondent No.1, legal representatives of the deceased, namely, Parwez, Ashiq, Arbaz, Sameer – minor sons, Ruksana, Parmina and Basmina – daughters, of Abdul Hamid deceased, had brought a claim petition under Section 166 of the Motor Vehicle Act, against respondents i.e. Aasu – driver, Imran –

owner and IFFCO-TOKIO General Insurance Co. Limited, insurer of the offending vehicle, claiming compensation.

Notice of the claim petition was given to the respondents. Respondent No.1 did not appear despite service, whereas respondents No. 2 and 3 had put in appearance and filed separate written statements contesting the claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead their respective evidence. After hearing the arguments, the Motor Accident Claims Tribunal, Nuh, vide award dated 25.5.2013, accepted the claim petition and awarded a compensation of Rs.4,56,000/- to the claimants payable by respondents No. 1 and 2, jointly and severally, alongwith interest @ 6% per annum from the date of filing of claim petition till actual realization. A direction with regard to apportionment of the amount and its disbursement was given in the award itself.

However, it was directed that at the first instance respondent No.3 Insurance company shall pay the compensation amount, then it shall be at liberty to recover the same from respondents No. 1 and . It had been so observed for the reason that respondent No.1 was not having a valid and effective driving license at the time of accident, which resulted in violation of terms and conditions of Insurance Policy, absolving respondent No.3 Insurance company of its liability and obligation to indemnify respondent No.2 insured with regard to its liability to pay compensation to the claimants. Respondent No. 3 Insurance company had examined RW-1 Vivek Bhatnagar, Junior Assistant, RTO Office, Agra, who had stated that driving license

Exhibit P-6 has not been issued by RTO Office, Agra, rather the same issued in the name of Suresh Kumar son of Kundan Singh resident of Nai Abadi, Nagla Jassa, Agra.

In view of such statement and absence of any evidence adduced by respondent No.2 that respondent No.1 was possessing a valid and effective driving license at the time of accident, the Tribunal was justified in concluding that respondent No.1 was not in possession of valid and effective driving license at the time of accident. Therefore, Insurance company had been given the recovery rights.

Feeling dissatisfied with the amount of compensation awarded by the Motor Accidents Claims Tribunal, Nuh, the claimants have brought the present appeal, notice of which was given to all the three respondents, but they did not appear despite service.

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

On the basis of evidence produced before it, the Tribunal had concluded that the accident in question in which Abdul Hamid had expired, had taken place on account of rash and negligent driving of the offending vehicle by its driver respondent No.1 Aasu and for that reason, under issue No.2, it was observed that claimants being legal heirs of deceased would be entitled to get compensation from the respondents.

With regard to quantum of compensation, the Tribunal has taken age of the deceased to be 46 years as entered in the post mortem report Exhibit P-5. No other document had been produced by the claimants to show the age of the deceased at the time of his death. According to the claimants, deceased was doing the work of a milkman as well as an agriculturist, earning Rs.10,000/- per month. However, in absence of any cogent and convincing evidence in that regard, the Tribunal took his monthly income to be Rs.3,500/- as an unskilled labourer. Though the accident had taken place in the year 2010, but to my mind this amount taken is somewhat on lower side and proper figure to be taken would be Rs.4,500/- per month. Therefore, monthly income of the deceased is taken to be Rs.4,500/-.

However, the Tribunal has not awarded any amount towards future prospects in terms of judgment ***National Insurance Company Limited vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009,*** wherein it has been held that where the deceased was between 40 to 50 years, an addition of 25% of the established income of the deceased has to be made towards future prospects. By making that addition, the monthly income of the deceased comes out to be Rs.4,500 +1,125 = Rs.5,625/-.

Keeping in view the number of dependents, the Tribunal has deducted 1/4th amount towards personal and living expenses of the deceased, which I find to be quite reasonable. In that way the monthly dependency of the claimants comes out to Rs.5,625 – 1,406 = Rs.4,219/- . The annual dependency of the claimants is worked out to Rs. 4,219 x 12 = 50,628/-.

In terms of the ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** when the deceased is within the age group of 40 to 50 years, multiplier of 13 is to be applied. The Tribunal fell in error in using the multiplier of 14. By applying the multiplier of 13, the payable compensation comes out to Rs.50,628 x 13 = 6,58,164/-

On this amount, in terms of ratio of authority ***Pranay Sethi's case (Supra),*** the appellants – claimants are entitled to get Rs.15,000/- towards loss of estate and Rs.15,000/- on funeral expenses, totalling Rs.30,000/-. Thus the total compensation payable to the claimants comes to Rs.6,58,164 + 30,000 = Rs.6,88,164/-.

The Tribunal has awarded a sum of Rs.4,56,000/- to the claimants as compensation.

In that way, the claimants are entitled to get additional compensation of (Rs.6,88,164 – 4,56,000) Rs. 2,32,164/-. The claimants-appellants shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award. In that way this appeal is allowed partly.

(H.S. Madaan)
Judge

31.7.2019
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Whether speaking / reasoned Yes / No
Whether reportable Yes / Nos