IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-4526-2014 (O&M)

Tata AIG Insurance Company Ltd.

...Appellant

Versus

Gaurav Johri and others

...Respondents

(2) FAO-7618-2014 (O&M)

Gaurav Johri and others

...Appellants

Versus

Sandeep Singh and others

...Respondents

Date of Decision:- 04.11.2019.

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. R.K. Sharma, Advocate for the appellant in FAO-4526-2014 and for respondent No.3 in FAO-7618-2014.

Ms. Ekta Thakur, Advocate for the appellants in FAO-7618-2014 and for respondent Nos.1 to 5 in FAO-4526-2014.

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H.S. MADAAN, J.

In nutshell facts of the case as per version of the claimants are that on 05.11.2012, at about 06.15 pm, Ms. Kamlesh Kumari deceased along with her son Gaurav Johri was proceeding from their Village Raipur Khurd towards Chandigarh on foot. When they had reached near light point and were standing on side of the road and was waiting to cross the road, in the meanwhile, respondent No.1 Sandeep Singh, driving motorcycle bearing registration No.PB-11-BA-2254 (for short 'offending vehicle') in a rash and negligent manner came from Chandigarh side and by jumping red light and driving the motorcycle at a very high speed hit Kamlesh Kumari. As a result, she fell down on the road and suffered multiple injuries. Immediately after the accident, she was shifted to Govt. Medical College and Hospital, Sector-32, Chandigarh for treatment, however, she was declared brought dead by the doctors there. FIR No.400 dated 05.11.2012 for offences under Sections 279 and 304-A IPC was recorded with Police Station Sector 31, Chandigarh regarding the accident. As the version of petitioners/claimants goes, the deceased was aged about 58 years and she had retired as a JBT teacher. She was getting pension of Rs.8000/- per month. In addition to that, she was earning Rs.12,000/- to Rs.15,000/- by doing tuition work and her total income was Rs.20,000/- to Rs.23,000/- per month. Considerable amount was spent on her funeral and last rites. Gaurav Johri, aged about 24 years-son, Manju, aged about 30 years, Meenu aged 27 years-daughters, Preeti, aged 35 years and Renu aged 31 years-married daughters of Smt. Kamlesh Kumari had brought a claim petition under Section 166 of the Motor Vehicles Act, for grant of compensation to the tune of Rs.30 lacs against the respondents i.e. Sandeep Singh-driver, Parwinder Singh-owner and Tata AIG Insurance Company Ltd., Chandigarh-insurer of the offending vehicle.

On being put to notice, all the three respondents appeared and filed written statements, contesting the claim petition. Respondents No.1 & 2 submitted a joint written statement, wherein, they contended that the accident had taken place due to negligence of the deceased who was crossing the road in violation of the traffic rules and respondent No.1 was not negligent in any manner.

In the written statement filed by respondent No.3-insurance company, it took up a plea that the claim petition had been filed by the claimants in collusion with respondents No.1 & 2 and that respondent No.1 was not holding a valid and effective driving license at the time of accident; that no information regarding the accident in question had been supplied to respondent No.3 by respondent No.2 owner of the offending vehicle. In the end, all the three respondents prayed for dismissal of the claim petition.

No replication was filed. On pleadings of the parties, the following issues were framed:-

1. Whether deceased Kamlesh Kumari died on account of injuries sustained by her in a road accident, which took place on 05.11.2002 due to rash and negligent driving of motor cycle No.PB-11-BA-2254 by its driver-respondent No.1?OPP.
2. Whether claimants are entitled to any amount of compensation, if so, what amount and from whom? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident? OPR.
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') decided issue No.1 in favour of claimants, issue No.2 was also decided in favour of the claimants, issue No.3 was decided against respondent No.3. Resultantly, vide award dated 29.01.2014, the claim petition was accepted and compensation of Rs.6,58,456/- was awarded to the claimants. The claimants were granted interest @ 7.5% p.a. on the compensation amount from the date of filing of claim petition till actual realization. It was directed that out of the compensation amount, claimants No.1, 4 & 5 would be entitled to get a sum of Rs.1 lakh each, whereas, claimants No.2 & 3 would be entitled to a sum of Rs.1,79,228/- each. The liability to pay this amount was held to be joint and several by all the three respondents.

The respondent-insurance company felt aggrieved by the award and has preferred an appeal before this Court, praying that the award in question be set aside and the claim petition be dismissed, whereas, the claimants have also preferred an appeal, seeking enhancement of the compensation awarded. Notice of both the appeals were given to respective respondents, who have put in appearance through counsel.

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

The Tribunal on the basis of evidence produced before it has reached a conclusion that respondent No.1 Sandeep Singh was author of the accident, in which, Kamlesh Kumari had suffered injuries, to which she had succumbed on account of rash and negligent driving of the offending vehicle. The plea raised by respondents No.1 & 2 in their written statement that the deceased herself was negligent, since she was crossing the road without observing the traffic rules was not accepted. Such finding is proper and appropriate and does not call for any interference. Therefore, contention raised by learned counsel for insurance company that it was a case of contributory negligence cannot be accepted. It being so, the petitioners/claimants being legal heirs and legal representatives of the deceased were certainly entitled to recovery compensation from the driver, owner and insurance company of the offending vehicle.

Learned counsel for the appellants/claimants has contended that the deceased was a retired employee and was doing household work also and some amount should be added for the services rendered by her to the family, whereas, this contention is vehemently opposed by learned counsel for insurance company, contending that as per specific case of claimants, the deceased was a retired teacher, getting pension and doing tuition work etc. and they have nowhere taken up a specific plea of her doing the household work, providing services to the family and they have failed to lead evidence that she was giving tuition or doing household work.

After hearing learned counsel for the parties, I find that no addition on account of services rendered by the deceased by doing household work in this case is called for.

The Tribunal had taken the age of deceased to be 58 years, a pensioner having retired as a teacher, getting Rs.8798/- per month, the matriculation certificate Ex.P1, reflecting date of birth of Kamlesh Kumari as 08.05.1954 was relied upon to determine her age as 58 years at the time of her death in question, which had taken place on 05.11.2002. To assess the income of deceased, copy of her pension order produced in evidence by the claimants as Ex.P5 was relied upon showing that she was getting Rs.8798/- per month as pension. The plea of the claimants that she was doing tuition work etc. having additional income from those sources was rejected on account of failure of the claimants to bring sufficient evidence to support those contentions.

Considering the amount spent by the deceased on herself, a deduction to the extent of 1/4th was made by the Tribunal, keeping in view the number of dependents family members. In that way, dependency of the claimants was found to be Rs.6598.50/-. The Tribunal has not made any addition towards future prospects. Considering the age of deceased, 10% amount deserves to be added towards future prospects. Therefore, adding the said amount, the monthly income of the deceased is arrived at Rs.7258/-.

Keeping in view the number of dependents, 1/4th of the amount is to be deducted towards personal and living expenses of the deceased. Doing that, the dependency of claimants comes out to Rs.7258/- per month, annual dependency is worked out to Rs.87,096/-.

The Tribunal has used multiplier of 8, though, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport**

Corporation and Anr., 2009(3) RCR(Civil)77, when the deceased was in age group of 56-60 years, multiplier of 9 should be used. Doing that, total compensation payable comes out to Rs.7,83,864/-.

The Tribunal has awarded sum of Rs.25,000/- on account of expenditure incurred on transportation and last rites. The claimants are entitled to get Rs.15,000/- on account of loss of estate and Rs.15,000/- towards funeral expenses in terms of Apex Court authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**. Thus, the total compensation payable is arrived at Rs.8,13,864/-.

The Tribunal has awarded compensation of Rs.6,58,456/-. In that way, the claimants are entitled to get additional compensation of Rs.1,55,408/-. They would be entitled to get interest @ 7.5% p.a., on the enhanced amount of compensation from the date of filing of appeal till actual realization. The amount of compensation would be apportioned among the claimants in equal shares. The liability to pay this amount would be joint and several of all the three respondents. As a sequel of above discussion, the appeal i.e. FAO-4526-2014 filed by the insurance company lacks merit and the same is dismissed, whereas, the appeal filed by the claimants i.e. FAO-7618-2014 is partly allowed.

04.11.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No