

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

F.A.O. No. 5502 of 2013

DATE OF DECISION :- October 29, 2019

Ritu and others

...Appellants

Versus

Des Raj and others

...Respondents

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

Present:- Mr. Namit Sharma, Advocate for the appellants.

Mr. Akshit Aggarwal, Advocate for respondents No. 1 and 2.

Mr. Navin Kapur, Advocate for respondent No. 3.

Briefly stated the facts of the case are that on 18.5.2010, Vinod Kumar (deceased) along with Ashwani son of Jiwan Dass, Parveen son of Dula Ram were riding motor cycle No. HR-05-M-8689. The motor cycle was being driven by Parveen Kumar at a moderate speed. When the motor cycle reached near Petrol Pump then TATA-207 vehicle having registration No. HR-58-A-1661 (offending vehicle) being driven in a rash and negligent manner by respondent No. 1-Des Raj came from side of village Newal and hit the motor cycle resulting in the accident. All the three occupants of motor cycle sustained multiple injuries. After the accident respondent No. 1-Des Raj-driver of offending vehicle ran away from the spot. The injured were taken to hospital. Vinod Kumar succumbed to injuries on 21.5.2010 at

PGI, Chandigarh. F.I.R. No. 133 dated 18.5.2010 was registered against respondent No. 1-Des Raj for offences under Sections 279, 337, 304A. Parveen Kumar had also succumbed to the injuries suffered by him in the mishap. His legal representatives i.e. his widow Smt. Ritu, aged about 34 years, minor daughter Muskan, aged about 8 years, minor son Ansh Kumar, aged about 5 years, father Sh. Dula Ram, aged about 60 years and mother Ram Devi, aged about 55 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Des Raj-driver, The Yamuna Syndicate Ltd. through its owner and The Oriental Insurance Company Limited, Jagadhari Road, Yamunanagar-insurer of the offending vehicle claiming compensation.

As per version of the claimants, Parveen Kumar was aged about 35 years. He was earning Rs.7200/- per month from avocation of tailoring and Rs.50,000/ per month from that of agriculture and the claimants were dependent upon the earnings of the deceased. Three claim petitions were filed arising out of the same accident which were tried together by Motor Accident Claims Tribunal, Karnal. All the claim petitions were contested by the respondents. The Tribunal vide Award dated 28.2.2013 had accepted the claim petitions. The claim petition filed by Ritu and others with regard to death of Parveen Kumar was allowed and compensation of Rs.7,26,917/- (round off to Rs.7,27,000) was awarded to the claimants payable by the respondents jointly and severally along with interest at the rate of 6% per annum from the date of filing of claim petition till actual realization. The liability of all the three respondents was held to be joint and several.

The petitioners claimants were dissatisfied with the amount of

compensation awarded to them by the Tribunal and have approached this Court by way of filing an appeal. Notice of the appeal was given to the respondents, who have appeared in the Court through their counsel.

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

The Tribunal on analysis of the evidence produced before it has come to the conclusion that respondent No. 1-Des Raj was the author of the accident by his rash and negligent driving of the offending vehicle in which Vinod Kumar, Parveen Kumar and Rajiv Kumar had died. The finding is proper and appropriate and does not call for any interference. It being so, the driver, owner and the Insurance Company of the offending vehicle are liable to pay compensation to the legal representatives of the deceased. With regard to death of Parveen Kumar, the Tribunal has taken age of the deceased to be 35 years. His income was taken to be Rs.4800/- per month. Though the case set up by the claimants that he was earning Rs.7200/- per month from stitching and Rs.50,000/-per month from avocation of agriculture was rejected, however, no amount has been added towards future prospects. In terms of the judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' where age of the deceased was below 40 years then addition of 40% is to be made towards future prospects. Doing that the monthly income of the deceased is taken to be Rs.6720/-(4800 + 1920). The Tribunal has ordered deduction of 1/4th of the monthly income of the deceased towards his personal and living expenses. This has been rightly done keeping in view the number of his dependent family members. In that way the dependency of the claimants

comes out to Rs.5040/-. The annual dependency comes out to Rs.60,480/- (5040 x 12). The Tribunal has properly applied multiplier of 16. Doing that the total compensation comes out to Rs.9,67,680/-(60480 x 16). In view of ratio of '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' the claimants are entitled to get total 70,000/- under conventional Heads. Making addition of that amount the compensation amount comes out to Rs.10,37,680/- (9,67,680 + 70,000). The claimants are also entitled to get Rs.20,717/- on account of medical expenses. In that way the total compensation comes out to Rs.10,37,680/-. The Tribunal has awarded compensation of Rs.7,27,000/-. In that way, the enhanced amount of compensation comes out to Rs.3,10,680/-. Accordingly, the appeal is allowed partly. The impugned award is modified and a sum of Rs.3,10,680/- as enhanced compensation is awarded to the claimants payable by the respondents jointly and severally with interest at rate of Rs.7.5% per month from the date of filing of appeal till the actual realization. The enhanced amount shall be apportioned among the claimants proportionately in terms of the direction already issued by the Tribunal in the impugned award.

With such modification, the appeal is allowed partly.

(H.S. MADAN)
JUDGE

October 29, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No