IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4886-2014(O&M)
Date of decision:-10.4.2019

Nirmala Devi and another

...Appellants

Versus

National Insurance Company Ltd.

...Respondent

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

Present: Mr.Ravish Bansal, Advocate
for the appellants.

Mr.Suvir Dewan, Advocate
for the respondent.

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H.S. MADAAN, J.

On account of death of one Joginder Kumar son of Daya Ram in a motor vehicular accident, which took place on 14.6.2012 in the area of Chand Baja bye-pass, while he was driving motorcycle bearing registration No.PB-04N-6561 make Hero Honda, his legal representatives namely his mother – Smt.Nirmla devi and father Sh.Daya Ram had brought a claim petition under Sections 163/166 of the Motor Vehicles Act, 1988 against National Insurance Company Ltd., Fauji Road, Krishna Street, Kotkapura – insurer of motorcycle No.PB-04N-6561; that unknown driver and owner of the unknown offending vehicle were also impleaded as respondents No.2 and 3 but that was meaningless since identity of the alleged offending vehicle was not borne out from the record. According to the claimants, the accident was caused by rash and negligent driving of driver of unknown vehicle, who sped away the vehicle after the accident; that the post-mortem examination on the dead body of Joginder Kumar was performed; that an FIR No.65 dated 14.6.2012 for the offences under Sections 304-A/427 IPC was registered at Police Station Sadar, Kotkapura.

On getting notice of the claim petition, respondent No.1 insurance company had appeared and filed written statement contesting the petition raising preliminary objections that the claim petition was not maintainable since as per the Motor Vehicles Act, owner's death is not covered as a third party and the claim petition was not maintainable under Section 163/166 of the Motor Vehicles Act. Various other legal objections were also taken up. The material assertions in the claim petition were denied, finally praying for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether the claimants are legal heirs of Joginder Kumar deceased? OPA.
2. Whether Joginder Kumar died on 14.6.2012 in the area of village Chand Baja in a motor vehicular accident? OPA.
3. Whether the claimants are entitled for compensation, if so, to what extent and from whom? OPA.
4. Whether the claim petition is not maintainable in the present form, as alleged? OPR.
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimants had got recorded their statements as AW1 and AW2 besides examining ASI Pal Singh as PW3.

On the other hand, respondent did not lead any evidence.

After hearing the learned counsel for the parties, the claim petition was accepted by the Tribunal vide award dated 16.4.2014 and compensation of Rs.25,000/- was awarded to the petitioners/claimants payable by respondent No.1 along with interest @ 12% per annum from the date of filing of the claim petition till realization of the amount.

This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation.

Notice of the appeal was given to respondent – insurance company, which put in appearance through counsel.

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

The Tribunal has observed in the award that Joginder Kumar had died due to road side accident, however, while determining the question as to whether some compensation was liable to be paid, if so, to what extent to parents of deceased, i.e. the claimants, the Tribunal has observed that the insurance policy Ex.P12 standing in the name of Smt.Sunita Rani; that an additional sum of Rs.50/- had been paid as premium by the insured relating to risk of owner/driver. However, in the instant case, the deceased Joginder Kumar was neither owner nor driver of the motorcycle. The Tribunal while coming to this conclusion was influenced by the fact that the driving licence of the deceased was not placed on record by the claimants, therefore it was a hit and run type of accident entitling the claimants to get compensation of Rs.25,000/- only. However, the Tribunal has not appreciated the factual and legal position in proper perspective. While rightly observing that extra premium of Rs.50/- had been paid to cover risk of owner/driver, the Tribunal fell in error in observing that the deceased was not driver of the vehicle. If we see the facts and circumstances of the case, then it comes out that it was the deceased, who was driving the motorcycle in question at the relevant time. In the FIR itself got recorded by Daya Ram – father of the deceased, who was one of the claimant in this case, it is mentioned that the deceased had left for his work on his motorcycle bearing registration No.PB-04N-6561 make Hero Honda and when on coming to know about the accident, he went to spot, he found that dead body of Joginder Kumar was lying at the spot and motorcycle in broken condition was also lying nearby. Thus, it clearly comes out that the deceased was driving the motorcycle at the relevant time. Though the motorcycle stood registered in the name of Smt.Sunita Rani but she had got recorded her statement in the Court to the effect that she had sold the motorcycle in question to the deceased and had furnished an affidavit in that regard. Therefore, though deceased was not registered owner of the motorcycle in question but the same was in his custody and he had been using the same with the registered owner having transferred her rights to him and it was he, who was driving the motorcycle at the relevant time when it met with an accident. Therefore, insurance company is liable to pay compensation on account of his death in the motor vehicular accident.

As per the case of the claimants, the deceased was earning Rs.5,000/- per month and they were dependent upon his earnings. Admittedly, the deceased was a bachelor. A perusal of his post-mortem report goes to show that his age was mentioned to be 19 years. In the claim petition, the claimants have given the age of deceased to be 19-20 years. As per copy of his school certificate Ex.A5, his date of birth was 6.9.1992, that means on the date of accident i.e. on 14.6.2012, he was aged about 20 years. As per the salary certificate Ex.A6, the deceased was drawing a sum of Rs.5,000/- per month working with S.R. Paryavaran Engineers (P) Ltd., Zirakpur, District Mohali plus travelling charges @ Rs.1.50 per k.m. There is nothing on record as to how much amount he used to get as travelling allowance.

Therefore, I take the monthly income of deceased to be Rs.5,000/-. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.5,000 + 2,000 = Rs.7,000/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** in such an eventuality, deduction towards self-expenses is to be taken as 1/2. Doing that the dependency of claimants comes out to Rs.3,500/- per month, annual dependency comes out to Rs.3,500 x 12 =

Rs.42,000/-.

Keeping in view the authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra), multiplier of 18 would be appropriate. Doing that the compensation payable comes out to Rs.42,000 x 18 = 7,56,000/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs.7,56,000 + 30,000 = 7,86,000/-.

The Tribunal has awarded compensation of Rs.25,000/-.

In this way, the enhanced amount comes out to Rs.7,61,000/- (7,86,000 - 25,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.7,61,000/-. The other terms and conditions given in the award shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly with costs.

10.4.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No