IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2447 of 2016 (O&M)

Date of decision: 18.09.2019

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Sinder Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Priya Deep, Advocate for
Mr. Sanjeev Kodan, Advocate for the appellant.

None for respondents No.1 and 2.

Mr. Arundeep, Advocate for
Mr. RS Pandher, Advocate
for respondents No.3 and 4.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 01.02.2016 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib whereby compensation has been awarded on account of death of Ranjit Singh @ Rana Singh in a motor vehicular accident that took place on 20.05.2014.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation.

To challenge findings on issue No.1 (whether the respondent

No.2 caused the death of Ranjit Singh @ Rana Singh by driving his tipper No.PB-65X-1692 in a rash and negligent manner on 21.05.2014 at about 12.30 am in the area of Bassi Pathana?OPP), it is argued that FIR in respect of occurrence dated 20.05.2014 was registered on 21.05.2014 on the basis of statement of Manpreet Singh, claimant No.2 and son of the deceased against unknown vehicle and unknown driver. It is further argued that Charan Singh CW3 was introduced later to support cause of the claimants and extract compensation from the insurance company. It is argued that Charan Singh neither shifted the injured to the hospital nor lodged FIR. His statement under Section 161 Cr.PC was recorded on 27.06.2014 meaning thereby that he even did not record his statement with the police for a period of more than one month after the alleged accident.

With regard to quantum of compensation, counsel has submitted that the Tribunal has wrongly applied deduction for personal expenses to the extent of $1/4^{th}$ in place of $1/3^{rd}$. Compensation allowed under conventional heads needs modification in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. Income of the deceased assessed is on higher side and needs modification.

There is no representation on behalf of respondents No.1 and 2, earlier represented by a counsel.

Counsel for respondents No.3 and 4 has echoed arguments advanced by counsel for the insurance company.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, Manpreet Singh, son of the deceased and author of FIR dated 21.05.2014 is not an eye-witness to the occurrence. The occurrence in question took place around 11 pm on 20.05.2014 when Ranjit Singh was on his way to perform his duty in the area of ITI Chowk, Cheema Colony, Chaudhary Colony, MP Colony and main bazar Bassi Pathana as CPO. Charan Singh CW3 was examined to discharge onus of issue No.1, reproduced hereinbefore. He tendered into evidence his duly sworn affidavit Ex.CW3/A. In para 2 of the affidavit, he has narrated as to how the accident in question took place due to rash and negligent driving of offending vehicle by Dharminder Singh. The witness was cross examined at length by counsel representing different sets of respondents before the Tribunal. Counsel for the insurance company has failed to point out any facts elicited in cross examination of Charan Singh to discard or disbelieve his testimony. Charan Singh is not one of the claimants nor a beneficiary in case claim is accepted. He is not proved to be related to the claimants to become an eyewitness at their instance. Counsel has also failed to point any materials on record to prove any collusion between the claimants and driver/owner of the offending vehicle to show that vehicle in question has been planted to extract compensation from the insurance company. In the given circumstances, the mere fact that Charan Singh had shown an in-different attitude by not shifting the injured to hospital or reporting the matter to the police until his statement was recorded on 27.06.2014 *ipso facto* cannot be considered sufficient to reject his testimony particularly in the circumstances that he has explained as to why he did not shift the injured to hospital and allowed him to bleed at the spot resulting in his death. Charan Singh was not even aware at the time of accident that the injured is Ranjit Singh belonging to Bassi Pathana. In the given circumstances, I find it difficult to differ with findings of the Tribunal on issue No.1 upholding plea of the claimants that accident is the result of rash and negligent driving of offending vehicle by its driver.

This brings the Court to compensation assessed. The Tribunal awarded Rs.12,28,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.9000/-
Multiplier	13
Deduction for personal expenses	1/4th
Loss of dependency	Rs.10,53,000/-
Expenses on funeral	Rs.50,000/-
Loss of love and affection to claimant No.1	Rs.75,000/-
Loss of love and affection to claimant No.2	Rs.50,000/-

The plea of claimants is that Ranjit Singh was doing the job of Security Guard (Chowkidar) as CPO at night at Bassi Pathana and also doing job in a factory in morning time on hourly basis thereby earning Rs.20,000/- per month. The claimants examined Gursewak Singh CW4 to prove that deceased was working under him as labourer on hourly basis thereby earning Rs.8000/- per month. They further examined Kailash Nath CW5 to prove that deceased was posted as CPO and doing his duty in the area of ITI Chowk, Cheema Colony, Chaudhary Colony, MP Colony and main bazar Bassi Pathana thereby charging Rs.50/- from each house and shop in the area. Both the witnesses failed to produce any documentary evidence with regard to employment and income of the deceased. The Tribunal has assessed income of the deceased by treating him as a labourer. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6500/- per month.

The application for compensation has been filed by the widow and adult son of the deceased, therefore, admissible deduction for personal expenses is 1/3rd. Claimants shall be entitle to addition in income for future prospects @ 10%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,43,600/- [(6500 x 12 x 13) + (10% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.8,13,600/- and compensation assessed by the Tribunal is reduced to the extent of Rs.4,14,400/- (12,28,000 - 8,13,600). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

18.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No