IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211-3 FAO-3495-2015 (O&M)

Date of decision: 30.08.2019

PUSHPA DEVI AND OTHERS ... Appellants

Versus

ANINDI KUMAR YADAV AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RS Mamli, Advocate
for the appellants.

Mr. Rajesh K. Sharma, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Rajbir Singh in a motor vehicular accident that took place on 29.07.2012.

The Tribunal awarded Rs.11,85,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.5000/-
Addition in income for future prospects	50%
Multiplier	16
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.9,60,000/-
Expenses on funeral	Rs.25,000/-
Loss of and consortium and estate	Rs.1,00,000/-
Loss of love and affection, care and guidance for minor sons	Rs.1,00,000/-

However, only 50% compensation has been paid to the claimants as 50% negligence has been attributed to the deceased.

Counsel for the claimants would argue that findings of the Tribunal attributing 50% negligence to the deceased are incorrect and liable to be modified. It is further submitted that as a matter of fact, accident is the result of exclusive rashness and negligence of vehicle No.PB-10-CT-7762 driven by Anindi Kumar Yadav respondent No.1 therein.

With regard to compensation, it is urged that income of the deceased has been assessed at a lower rate as the deceased was driver of car No.HR-55-NT-6835 at the relevant time.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No.1 attributing 50% negligence to the deceased. However, he would submit that addition for future prospects and compensation under conventional heads may be modified in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

The injured witnesses Rambeer PW1, Manoj Kumar PW2, Sushma Devi PW3, Pushpa Devi PW4 and eye-witness Vijayveer PW5 were examined. All the witnesses have stated in unison that car driven by Rajbir Singh was on correct side of the road and driven according to traffic rules. The Tribunal has attributed contributory negligence to the deceased merely because the witnesses have not stated that the offending vehicle i.e. truck was brought on wrong side to hit the vehicle in which the injured were travelling.

Indisputably, on the basis of FIR No.75 dated 30.07.2012 registered against driver of the offending vehicle, he faced criminal proceedings before the Court at Jalandhar. The driver of offending vehicle did not appear in the witness box to explain the circumstances under which the accident in question took place, therefore, an adverse inference is liable to be drawn against the respondents before the Tribunal. Not only this, counsel for the insurance company has failed to point out any materials elicited in cross examination of the injured witnesses on the basis whereof negligence can be attributed to the deceased. The mere fact that deceased had driven the vehicle for 12-14 hours itself is not sufficient to attribute negligence to him more particularly in the circumstances that the injured witnesses have consistently stated that the driver had taken rest at different intervals. In this view of the matter, I find merit in contention of the appellants that findings of the Tribunal attributing 50% negligence to the deceased cannot be allowed to sustain and resultantly set aside. As a natural corollary, issue No.1 is answered against the respondents before the Tribunal and in favour of the claimants.

This brings the Court to compensation assessed by the Tribunal. There is no evidence on record with regard to income of the deceased. However, he was driving the ill-fated car that met with accident. Taking a clue from notification issued by the State of Haryana fixing minimum wage of a skilled worker at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Addition in income for future prospects would be 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,75,200/- [(6000 x 12 x 16) + (40% 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.11,45,200/- and additional amount is Rs.5,52,700/- (11,45,200 – 5,92,500), payable with interest @ 7.5% per annum from the date of petition till realization, to be paid to minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

30.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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