IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3637-2015(O&M) with
XOBJC-3-CII-2016
Date of decision:-12.7.2019

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Smt.Sunita Devi and others

...Respondents

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

Present: Mr.Rajbir Singh, Advocate
for the appellant.

Mr.Vinod K. Kanwal, Advocate for
Mr.Ashit Malik, Advocate
for respondent Nos.1 and 2/cross-objectors.

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H.S. MADAAN, J.

Petitioners/claimants Smt.Sunita Devi, aged about 40 years – mother and Sh.Shamsher Singh, aged about 42 years – father of Mukender Singh, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Balkar Singh – driver and owner as well as Shri Ram General Insurance Company Ltd. - insurer of Tata 407 bearing registration No.HR-46-4672 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.25 lacs.

As per the case of the claimants, on 1.9.2013 Mukender Singh was pillion riding motorcycle bearing registration No.HR-08J-1081, which was being driven by Anil Kumar son of Ramesh Kumar; that they were going from village Khuran towards Kaithal; that the said vehicle was being followed by Rajan Narwal, who was also proceeding towards Kaithal side; that the motorcycle on which Mukender Singh – deceased was pillion riding, was being driven at a normal speed by Anil Kumar on his left hand side of the road; that when the motorcycle reached near city Kaithal and time was about 4:00 p.m., in the meanwhile the offending vehicle came from the opposite side being driven at a very fast speed and in a rash and negligent manner by respondent No.1 – Balkar Singh and by going on wrong side, it struck against the motorcycle being driven by Anil Kumar, on which Mukender Singh was pillion riding; resultantly both the riders fell down; that Rajan Narwal, who was driving motorcycle bearing registration No.HR-08M-9243 also fell down; that three of them suffered multiple serious and grievous injuries; that all the injured were shifted to Civil Hospital, Kaithal, however, keeping in view serious condition of Mukender Singh, he was referred to PGI, Chandigarh and while being taken there, he died on the way; that an FIR No.235 dated 2.9.2013 for the offences under Sections 279, 337 and 304-A IPC was registered with regard to the accident with Police Station City, Kaithal against respondent No.1 – Balkar Singh.

According to the case of the claimants, deceased Mukender Singh was aged about 20 years at the time of his death in the road side accident; he was doing tuition work and was helping his father in his work.

Rajan Narwal, who had suffered injuries in the accident had also filed a separate claim petition. Since both the claim petitions arose out of the same accident, they were consolidated, tried and decided together by Motor Accident Claims Tribunal, Kaithal.

On getting notice, both the respondents appeared and filed their separate written statements. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, both the claim petitions were allowed by Motor Accidents Claims Tribunal, Kaithal and compensation of Rs.10,28,000/- with interest at the rate of 9% per annum from the date of filing of the petition till the realization of that amount was awarded to the claimants in claim petition bearing No.89 of 2014 filed by claimants Smt.Sunita and Sh.Shamsher Singh, payable by both the respondents jointly and severally.

Feeling aggrieved by the said award passed in claim petition bearing No.89 of 2014, the respondent No.2 – insurance company has filed an appeal before this Court, notice of which was given to respondents. Respondents No.1 and 2 – claimants have put in appearance through counsel and filed cross-objections seeking enhancement of compensation.

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

Learned Tribunal keeping in view the facts and circumstances of the case in light of the evidence available on the record has come to the conclusion that respondent No.1 – Balkar Singh was author of the accident by his rash and negligent driving of the offending vehicle. There is specific finding by the Tribunal in that regard while deciding issue No.1. Though the plea of contributory negligence was raised there on behalf of the respondents, however, the Tribunal rejected the said plea contending that PW3 Rajan Narwal, who had suffered injuries in the accident had provided the ocular version of the mishap specifically stating that the accident was caused by offending vehicle by going on the wrong side of the road and there was no evidence that the ill-fated motorcycles were being driven in a rash and negligent manner. The cogent and convincing evidence brought on file by the claimants to prove their case has virtually gone unrebutted. Only Balkar Singh – respondent, who was driving the offending vehicle at the relevant time could depose regarding the manner of accident and say that he was not to be entirely blamed for the accident and some of the blame was required to be put on the drivers of the ill-fated motorcycles also. But for some strange reasons, he felt shy of stepping into the witness-box and depose in that regard. The insurance company on its part, has not led any evidence in that respect. The FIR in this case with regard to the accident was registered against Balkar Singh and he has been sent up to face trial in the Court on that account. Therefore, the Tribunal has rightly came to the conclusion that accident in which the deceased had suffered injuries, to which he had succumbed had been caused due to rash and negligent driving of the offending vehicle by respondent No.1 – Balkar Singh and no case for contributory negligence comes out to be there. Therefore, under the circumstances the question whether Anil Kumar, who was driving the ill-fated motorcycle was having a legal and valid driving licence at the relevant time does not carry much significance.

Now coming to the quantum part. The Tribunal while deciding issue No.2 has observed that deceased Mukender Singh was a student of B.com-Final year and was aged about 20 years. The claimants in claim petition No.89 of 2014 had submitted that the deceased was doing tuition work and was helping his father but no cogent and convincing evidence in that regard was produced. No student who might have been taking tuitions from the deceased was examined. No documentary evidence in that respect was brought on the file. There is nothing on the record to show that the deceased was actually assisting his father in his work. The Tribunal has observed that after passing B.com examination, he would have been in a position to work as a semi skilled worker, thereby assessing his monthly income to be Rs.6,000/-. This figure is disputed by the appellant in appeal seeking its reduction and the cross-objectors/claimants in the cross-objections seeking its enhancement. However, I find that there is no reason to make any decrease or increase from that amount while assessing income of the deceased.

Learned counsel for the cross-objectors has referred to a judgment in case titled ***Bharti Axa General Insurance Company Versus Ranjana Bhatia and others*** delivered by a Co-ordinate Bench of this Court in FAO-4042 of 2015(O&M) decided on 12.11.2018. In that case, the Tribunal had taken income of the deceased, who was aged about 18 years at the time of his death in the accident and was student of B.Com Part-1 and has joined institute of Chartered Accountant to complete his Chartered Accountant Course to be Rs.10,000/- per month. However, I find that this judgment does come to help of cross-objectors since in the instant case, the deceased was student of B.Com Final Year, whereas deceased in the judgment referred was student of B.Com Part-1 and in addition to that he had joined institute of Chartered Accountant to complete his Chartered Accountant Course. It was for that reason, the Tribunal had observed that after graduation and completion of C.A., he would have been earning that much amount whereas this cannot be said about a person completing graduation in commerce. With so many young persons having done graduation in Arts, Commerce and Science remaining unemployed, it would not be prudent to take income of a B.Com student to be more than Rs.6,000/-per month. Therefore, I do not find it proper to interfere with the figure of Rs.6,000/- so taken.

The Tribunal has added 30% of this amount towards future prospects but considering the age of deceased and ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** an addition of 40% is required to be made. Doing that the monthly income of the deceased is taken as Rs.6,000 + 2400 = Rs.8,400/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle and normally 50% is deducted as personal and living expenses. Doing that the dependency of claimants comes out to Rs.4,200/- per month, annual dependency comes out to Rs.4,200 x 12 = Rs.50,400/.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 50,400 x 18 = 9,07,200/-.

The Tribunal has awarded further compensation of Rs.25,000/- to the claimants as funeral expenses and Rs.50,000/- each to the claimants for loss of love and affection. However, 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/-. Thus, the total compensation comes out to Rs.9,07,200 + 30,000 = 9,37,200/-.

The Tribunal has wrongly awarded compensation of Rs.10,28,000/-. The same is reduced to Rs.9,37,200/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.9,37,200/-. Other terms and conditions in the original award shall remain the same. Amount if paid in excess be refunded by the claimants at the earliest.

With such modification, FAO-3637-2015 filed on behalf of the insurance company stands partly allowed.

In view of the above discussion, cross-objections filed on behalf of the claimants being devoid of merit stand dismissed.

12.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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