IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5725-2014(O&M) with
XOBJC-60-CII-2017(O&M)
Date of decision:-11.12.2019

Kamla Devi and others

...Appellants

Versus

Ishwar Singh and others

...Respondents

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

Present: Mr.John Kumar, Advocate
for the appellants.

Mr.Paul S. Saini, Advocate
for respondent No.6.

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H.S. MADAAN, J.

Smt.Kamla Devi aged about 44 years – widow, Kavita, aged about 26 years – daughter, Vikram aged about 21 years and Randeep aged about 19 years – sons of Virender alias Billu, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Ishwar Singh – driver, Ajay Kumar, Anju Bala, Deepak Kumar and Surender – owners and the United India Insurance Company Ltd. - insurer of truck bearing registration No.HR-39-3411 (hereinafter referred to as the offending truck), claiming compensation of Rs.80 lakhs with interest and cost.

Such Virender alias Billu had lost his life in the road mishap, which had taken place on 9.10.2012 at about 3:00 p.m. in the vicinity of village Rajthal. The said accident had taken place on account of rash and negligent driving of the offending truck by respondent No.1 – Ishwar Singh.

On getting notice of the claim petition, all the respondents had put in appearance and filed written replies contesting the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was partly allowed by Motor Accidents Claims Tribunal, Jind(hereinafter referred to as the Tribunal) and compensation of Rs.25,14,804/- 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, payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

Feeling dissatisfied with the amount of compensation awarded, the claimants have filed an appeal before this Court, notice of which was given to the respondent No.6 – insurance company, which has put in appearance through counsel. Cross-objections on behalf of the insurance company have also been filed.

An application bearing CM-8388-CII-2017 was also filed for condonation of delay of 141 days in filing the cross-objections.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 141 days in filing of the cross-objections stands condoned.

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

In this case, the Tribunal had taken age of the deceased to be 49 years, his avocation as Beldar in the office of Public Health, Engineering Division, Hansa and his monthly salary as Rs.17,491/- as mentioned in his salary certificate Ex.P1. The Tribunal has made an addition of 30% towards future prospects, working out his monthly salary as Rs.22,738/-. After deduction of 1/3rd amount towards personal and living expenses of the deceased, the dependency of the claimants was calculated as Rs.15,159/-, annual dependency to be Rs.1,81,908/-. Multiplier of 13 was used and total compensation worked out to Rs.23,64,804/-.

Upto this stage, no fault can be found with the approach of the Tribunal. But the Tribunal has awarded a sum of Rs.1,00,000/- to the widow of deceased on account of loss of consortium, Rs.25,000/- on account of love and affection and care of guidance for children and Rs.25,000/- on account of funeral expenses. The total compensation was worked out to Rs.25,14,804/-.

However, the Tribunal fell in error in doing so. 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, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 23,64,804 + 70,000 = 24,34,804/-.

The deceased admittedly was an employee of Haryana Government drawing the salary of Rs.17,491/- per month. His widow has been granted benefits under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006. Under these rules, widow of the deceased would be entitled to get the amount equivalent to the last drawn salary of the deceased husband for a period of 12 years or till the date her husband would have retired from Government service on attaining the age of superannuation. As per Rule VIII of the Haryana Family Pension Rules, the claimants would be entitled to 30% of the last salary drawn by the deceased towards family pension. PW3 Surender Kumar, Sub Divisional Clerk in the office of Executive Engineer, Public Health, engineering Division, Hansi, who had brought the salary statement of deceased Virender Singh proving salary certificate as Ex.P1 has stated in his cross-examination that petitioners had already received all the claims from the department after death of Virender Singh, Beldar; that the wife of deceased Virender Singh will get monthly family assistance i.e. full salary of the deceased till his date of retirement and after that she will get monthly pension till her death. Such assistance is liable to be deducted from the compensation awarded as has been observed by the Apex Court in ***Reliance General Insurance Co. Ltd. Versus Shashi Sharma & Ors., 2016(9) SCC 627*** and ***Oriental Insurance Co. Ltd. Versus Usha Devi and Ors., 2016(12) SCALE 489***.

Whereas learned counsel for the claimants has contended that only 50% of this amount can be deducted. In support of his that contention, he has referred to judgments passed by Co-ordinate Bench in FAO-3064-2013 titled ***Kamla Devi and others Versus Sahib Singh and others*** and FAO-993-2017(O&M) titled as ***IFFCO TOKIO General Insurance Company Limited Versus Baseeri and others***.

However, after hearing the learned counsel and going through the authorities referred to by learned counsel for the parties, I find that in this case a sum of Rs.14,69,244/-, the salary for seven years to be received by the widow of the deceased is required to be deducted from the total compensation.

Doing that the total compensation payable to the claimants comes out to Rs.9,65,560/-(24,34,804 - 14,69,244).

The Tribunal has wrongly awarded compensation of Rs.25,14,804/-. The same is reduced to Rs.9,65,560/-. The interest awarded @ 9% is somewhat on higher side. 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. 9,65,560/-. Other terms and conditions regarding apportionment in the original award shall remain the same. The share of the claimants shall be reduced proportionately.

With such modifications, XOBJC-60-CII-2017 filed on behalf of Insurance Company is allowed partly with costs.

If the amount of compensation has already been paid by the Insurance company, the claimants shall refund the same to the Insurance Company otherwise the Insurance Company shall be entitled to recover the difference in amount from the claimants as per law by way of filing an execution application before the Tribunal.

There is absolutely no reason to enhance the amount of compensation rather it has been reduced.

Consequently, FAO-5725-2014 filed on behalf of the appellants/claimants stand dismissed with costs.

11.12.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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