IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.07.2019

FAO No.5819 of 2014 (O&M)

Shri Ram General Insurance Co. Ltd. ... Appellant

Versus

Smt. Jalebo and others ... Respondents

FAO No.10249 of 2014 (O&M)

Smt. Jalebo and another ... Appellants

Versus

Manphul and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Goyal, Advocate for the insurance company.

Mr. SN Pillania, Advocate for the claimants.

None for the driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5819 and 10249 of 2014 as these have emerged out of the same award dated 04.01.2014 passed by the Motor Accidents Claims Tribunal, Jind whereby compensation has been assessed on account of death of Manish in a motor vehicular accident that took place on 16.04.2012.

FAO No.5819 of 2014 has been filed by Shri Ram General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

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

Counsel for the insurance company would argue that with regard to the occurrence in question, FIR No.143 dated 16.04.2012 was registered in PS Safidon at the behest of Mukesh Kumar PW2, cousin brother of the deceased. It is argued that in the FIR, offending vehicle is stated to be trolla but registration particulars of the vehicle were not mentioned. Said Mukesh Kumar got recorded his supplementary statement on 30.04.2012 wherein he had given particulars of the offending vehicle. It is vehemently argued that since Mukesh Kumar has not given registration particulars of the vehicle at the first available opportunity, it creates doubt if he was present at the site and witnessed the occurrence. In the alternative, it is argued that the offending vehicle has been planted later to extract compensation from the insurance company. Counsel would argue that Mukesh Kumar PW2 appeared in the criminal proceedings but again he has mentioned the offending vehicle to be a trolla and as a result, criminal trial culminated in acquittal of Manphul, respondent No.1 therein.

With regard to quantum of compensation, it is argued that income of the deceased is on higher side and needs reduction.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1. It is argued that claimants are entitle to addition in income for future prospects and adequate compensation under conventional heads. It is further argued that the deceased was a skilled worker and minimum wage of skilled worker at the relevant time was more than Rs.6500/- per month.

Mukesh Kumar, the author of FIR and an eye-witness to the occurrence appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW2/A. In para 2 of the affidavit, he has reiterated version of the claimants that accident took place due to rash and negligent driving of offending vehicle by its driver. The witness was cross examined by counsel for the respondents before the Tribunal but he was not confronted with the contents of FIR or alleged supplementary statement recorded on 30.04.2012. On due consideration of facts elicited in cross examination of Mukesh Kumar, it is difficult to accept contention of the insurance company that either Mukesh Kumar was not eye-witness to the occurrence or his testimony is not worthy of credence. Counsel for the insurance company has failed to point out materials on record to prove that the offending vehicle was planted later as a result of collusion between the claimants on one hand and driver or/and owner of the offending vehicle. In the given scenario, the insurance company cannot derive any advantage to its contention even if Mukesh Kumar had failed to support cause of the prosecution and criminal trial against driver of the vehicle culminated in judgment of acquittal. The driver of offending vehicle did not appear in the witness box to counter case of the claimants and testimony of Mukesh Kumar. In this view of the matter, I find myself unable to accept contention of the insurance company that findings of the Tribunal on issue No.1 suffer from an error much less perversity warranting intervention. Accordingly, findings of the Tribunal on issue No.1 are affirmed.

This brings the Court to quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.7,27,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.6500/-
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.7,02,000/-
Expenses on funeral etc.	Rs.25,000/-

The plea of claimants is that deceased was running an electric shop thereby earning Rs.10,000/- per month. The claimants produced certificate Ex.P1 issued by the Department of Industrial Training, Haryana with regard to the deceased having passed the prescribed trade test of Wireman held in the month of July, 2011 on the basis of training from August, 2008 to July, 2010. As such, findings of the Tribunal that the deceased was a skilled worker cannot be faulted with. Taking a clue from notification issued by the State of Haryana fixing minimum wage of highly skilled person, income of the deceased is assessed at Rs.5300/- per month. Claimants shall be entitle to addition in income for future prospects @ 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.8,01,360/- [(5300 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.8,31,360/- and the additional amount is Rs.1,04,360/- (8,31,360 - 7,27,000), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 150 days, to mother of the deceased, to be invested in fixed deposit for a period of two years.

In view of what has been discussed hereinbefore, the appeal filed by the claimants is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the insurance company stands disposed of.

Statutory amount of Rs.25,000/- deposited by the insurance company be remitted to the Tribunal for payment to the claimants.

16.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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