IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

221 FAO-3217-2016 (O&M)

Date of decision: 26.09.2019

THE ORIENTAL INSURANCE CO LTD ... Appellant

Versus

SURINDER KAUR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Pabbi, Advocate for the appellant.
Mr. Shaurya Punj, Advocate for
Mr. TVS Lehal, Advocate for respondents No.1 to 6.
None for respondents No.7 and 8.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 06.01.2016 passed by the Motor Accidents Claims Tribunal, SAS Nagar, Mohali whereby compensation has been assessed on account of death of Manjit Singh in a motor vehicular accident that took place on 09.04.2015.

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

Counsel would argue that FIR No.50 dated 10.04.2015 was registered at Police Station Kurali but there is no reference to the registration particulars or any other particulars of the offending vehicle, thus, possibility of offending vehicle being planted to extract compensation is not ruled out.

With regard to quantum of compensation, it is argued that claimants examined Amarjit Singh PW3 to prove employment and income of the deceased but the Tribunal has assessed income of the deceased much more than what was proved by Amarjit Singh.

Counsel representing the respondents/claimants has supported findings of the Tribunal on issue No.1 but would fairly concede that income of the deceased is liable to be assessed in view of testimony of Amarjit Singh PW3.

The Tribunal framed issue No.1, reads thus:-

> Whether death of Manjit Singh was caused in motor vehicle accident dated 09.04.2015 due to rash and negligent driving of offending Car No.PB-12-F-0767 by respondent No.1 Avtar Singh?OPC

To discharge onus of this issue, claimants examined Dilbag Rai PW2, referred to in para 6 of the award. Perusal of findings of the Tribunal would reveal that the Tribunal has not adverted to testimony of Dilbag Rai for deciding issue No.1 though it has been mentioned in para 9 that Dilbag Rai, one of the eye-witnesses of the occurrence, was examined. The Tribunal has taken note of registration of FIR, presentation of challan against Avtar Singh and pendency of criminal trial against Avtar Singh in the Court of Judicial Magistrate, Ropar. Counsel for the appellant has not pointed out any facts elicited in examination and cross examination of Dilbag Rai on the basis whereof it can be held that his testimony is not sufficient to discharge onus of issue No.1. The driver of offending vehicle did not appear in the witness box to counter case of the claimants or rebut testimony of Dilbag Rai PW2. In the given circumstances, I do not find any reason to differ with findings of the Tribunal on issue No.1.

Coming to the question of compensation, the Tribunal awarded Rs.47,30,461/- (rounded off to Rs.47,30,000/-) , detailed hereunder:-

Monthly income of the deceased	Rs.40,452/-
Addition in income for future prospects	15%
Multiplier	11
Deduction for personal expenses	1/4th
Loss of dependency	Rs.46,05,461/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-

Amarjit Singh, Senior Superintendent Fedral Mogul Goetze India Ltd. PW3 had testified that Manjit Singh was permanent employee No.R 13653 as highly skilled-1 worker in production/distribution department of the aforesaid concern since 01.07.1985. He produced computerised copies of salary slips from January, 2015 to April, 2015 Exs.P9 to P12. The last gross salary of the deceased was Rs.27,958.87. In addition thereto, the deceased was entitle to LTA of Rs.6000/- per annum, Rs.6000/- as annual bonus and Rs.8,484/- per annum (one basic pay) towards medical reimbursement. Taking into consideration the gross monthly income coupled with benefits of LTA, annual bonus and medical reimbursement, monthly income of the deceased is calculated at Rs.29,665/- (27,958.87 + 500 + 500 + 707). The annual income of the deceased is Rs.3,55,980/-. After deducting income tax (Rs.8856/-), net annual income is Rs.3,47,124/-. Addition in income for future prospects, multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.32,93,338/- [(3,47,124 x 11) + (15% future prospects) – (1/4th 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.33,63,338/- and compensation assessed by the Tribunal is reduced to the extent of Rs.13,66,662/- (47,30,000 - 33,63,338). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

26.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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