

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4277 of 2015 (O&M)

Date of decision : 31.7.2019

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Smt. Rekha and others

.....Appellants

vs.

Mohan Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Argued by : Mr. Vishal Nehra, Advocate for the appellants.

Mr. Ravinder Malik, Advocate for respondent No.2.

Mr. Rajesh K. Sharma, Advocate

Mr. Navin Kapoor, Advocate for respondent No.3.

...

H. S. Madaan, J.

CM 13655-CII-2015

This is an application for condonation of delay of 72 days in filing the present appeal.

For the reasons mentioned in the application, such delay in filing the appeal stands condoned.

The application is allowed accordingly.

Main case.

On account of death of one Krishan son of Pale Ram, in a motor vehicular accident, which took place on 1.9.2013, in the area of village Garhi Kalan, near GT Road, P.S. Ganaur, District Sonapat,

statedly on account of rash and negligent driving of truck No. HP-03B-1751 (hereinafter to be referred as 'the offending vehicle'), by Mohan Singh – respondent No.1, legal representatives of the deceased, namely, wife Smt. Rekha, aged 23 years, Baby Radhika aged about 2 years, Baby Kiran, aged about 5 months, minor daughters and Smt. Murti Devi, mother of the deceased, had brought a claim petition under Section 166 of the Motor Vehicle Act, against respondents i.e. Mohan Singh – driver, Shiv Lal – owner and Oriental Insurance Company Limited, Ambala, insurer of the offending vehicle, claiming compensation.

The claim petition was resisted by all the three respondents by filing written statements. Issues on merits were framed. Parties were afforded adequate opportunities to lead their respective evidence. After hearing the arguments, the Motor Accident Claims Tribunal, Sonapat, vide award dated 1.10.2014, allowed the claim petition and awarded a compensation of Rs.8,60,000/- to the claimants payable by respondents No. 1 to 3, jointly and severally, alongwith interest @ 7.5% per annum from the date of filing of claim petition till actual realization. A direction with regard to apportionment of the amount and its disbursement was given in the award itself.

Feeling dissatisfied with the amount of compensation awarded by the Motor Accidents Claims Tribunal, Sonapat, the claimants have brought the present appeal, notice of which was given to the respondents, who had appeared through counsel.

I have heard learned counsel for the parties, besides going

through the record.

On the basis of evidence produced before it, the Tribunal had decided issue No.1 in favour of the claimants and against the respondents, holding that respondent No.1 Mohan Singh was author of the accident by his rash and negligent driving of the offending truck, resulting in death of Krishan, as such Mohan Singh – driver, Shiv Lal, owner and Oriental Insurance Company Limited, Ambala Cantt, were held to be jointly and severally liable to pay the compensation.

For the purpose of assessing the compensation, the Tribunal had taken age of the deceased to be 25 years and assessed his monthly income to be Rs.5,000/-, taking him to be an unskilled labourer, rejecting the case of the claimants that the deceased was working as a cleaner of tractor on the monthly income of Rs.9,000/-, on account of lack of evidence to substantiate those assertions.

However, the Tribunal has not awarded any amount towards future prospects in terms of judgment **National Insurance Company Limited vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, wherein it has been held that where the deceased was below 40 years, an addition of 40% of the established income of the deceased has to be made towards future prospects. By making that addition, the monthly income of the deceased comes out to be Rs.5,000 + 2,000 = Rs.7,000/-.

Keeping in view the number of dependents, 1/4th amount has to be deducted towards personal and living expenses of the deceased.

In that way the monthly dependency of the claimants comes out to Rs.

$7,000 - 1750 = \text{Rs.}5,250/-$. The annual dependency of the claimants is worked out to $\text{Rs. } 5,250 \times 12 = 63,000/-$.

Keeping in view the age of the deceased at the time of accident and in terms of the ratio of authority *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77*, the Tribunal has rightly applied multiplier of 18. By applying that multiplier, the payable compensation comes out to $\text{Rs.}63,000 \times 18 = 11,34,000/-$

On this amount, in terms of ratio of authority *Pranay Sethi's case (Supra)*, the appellants – claimants are entitled to get $\text{Rs.}15,000/-$ towards loss of estate, $\text{Rs.}40,000/-$ towards loss of consortium and $\text{Rs.}15,000/-$ on funeral expenses, totalling $\text{Rs.}70,000/-$. Thus the total compensation payable to the claimants comes to $\text{Rs.}11,34,000 + 70,000 = \text{Rs.}12,04,000/-$.

The Tribunal has awarded a sum of $\text{Rs.}8,60,000/-$ to the claimants as compensation.

In that way, the claimants are entitled to get additional compensation of ($\text{Rs.}12,04,000 - 8,60,000$) $\text{Rs.}3,44,000/-$. The claimants-appellants shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award. In that way this appeal is allowed partly.

31.7.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes/ No
Yes/ Nos