IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6622 of 2014 (O&M)
Date of decision : 5.11.2019

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Karam Singh

................Appellant

vs.

Niranjan Singh and others

.................Respondents

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

Present: Mr. Aman Vashisht, Advocate for the appellant.

Mr. Amit Kumar Goyal, Advocate for respondent No.2

Mr. Balkar Singh, Advocate for respondents no. 3 and 4.

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H. S. Madaan, J.

Briefly stated facts of the case are that on 20.11.2011, Manish son of Karam Singh, alongwith his brother-in-law Jony son of Sushil Kumar, resident of village Sudhail, was going from village Manakpur, towards village Buhawi, District Kurukshetra, on a motorcycle bearing registration No. HR 07P-3697, being driven by Manish on which Jony was a pillion rider. At about 7.00 p.m. when they had reached near Dera Gujran of village Saran, on Saran Adhoya

Road, then respondent No.1 Niranjan Singh driving motorcycle bearing registration No. HR 71-7737, in a rash and negligent manner, by going on wrong side of the road hit motorcycle driven by Manish, with the result both the riders on the said motorcycle namely, Manish and Jony fell down alongwith their motorcycle. Respondent No.1 Niranjan Singh had also fallen down alongwith his motorcycle. However, after some time, he got up and sped away his motorcycle. Manish had suffered multiple grievous injuries on his head, face, left knee, right hand and other parts of body. Whereas Jony had received some minor injuries. Manish was taken to CHC Mustafabad, from where he was referred to Civil Hospital, Jagadhri, but keeping in view his serious condition, his relatives took him to Jindal Hospital, Jagadhri. Ultimately, during treatment, Manish succumbed to the injuries suffered by him in the said road mishap on 23.11.2011. The matter was reported to the police on the basis of which formal FIR No. 188 dated 21.11.2011, for offences under Sections 279, 337 IPC was registered at Police Station Chhappar. When Manish died, then offence under Section 304-A IPC was added.

Legal representatives of deceased, namely, his wife Anju, aged 20 years, minor son Ayush, aged about 4 months, mother Smt. Ram Rati, aged about 47 years and father Karam Singh, aged about 52 years, had brought a claim petition under Section 166 of the Motor Vehicles Act,1988 against respondents i.e. Niranjan Singh – driver and owner, as well as The New India Assurance Company Limited, Yamuna Nagar – insurer of motorcycle No. HR 71-7737 (hereinafter referred to as 'the offending vehicle'), claiming compensation to the tune of Rs.20 lacs.

On being put to notice, both the respondents appeared and filed written statements, contesting the claim petition, raising various legal objections. In the written statement filed by respondent No.1, he had contended that no such accident had taken place with his motorcycle and he has been falsely involved in the criminal case, as well as in the present claim petition. According to him, nevertheless, the motorcycle in question was insured with respondent no.2 – The New India Assurance Company Limited, Yamana Nagar, at the relevant time.

Respondent No.2 – insurance company, in the written statement filed by it had also taken various legal objections and statutory defences, contending that respondent No.1 was not having a valid and effective driving license at the time of the accident and terms and conditions of the Insurance Policy were violated, thereby absolving respondent No.2- Insurance company of its liability to pay the compensation. Both the respondents prayed for dismissal of the claim petition.

From the pleadings of the parties, following issues were struck :-

1. Whether the accident in question occurred on 20.11.2011 resulting into death of Manish, was due to rash and negligent driving of motorcycle bearing No. HR 71-7737 by respondent no.1? OPP
2. If issue no.1 is proved, what amount of compensation the claimants are entitled to and from whom? OPP

3. Whether the vehicle in question was being driven in violation of terms and conditions of the insurance policy, if so to what effect? OPRs
4. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their contentions.

In order to prove their case, claimants examined Dr. Yogesh Jindal as PW-1, Dr. Rarneeta as PW-2, Sanjeev Kumar Pharmacist as PW-3, claimant -Anju herself stepped into witness box as PW-4, besides examining Jony, eye witness as PW-5. Claimant Ram Rati also stepped into witness box as PW-6 and thereafter evidence of claimants was closed.

On the other hand, respondent No.2 examined M.L. Vaish, Investigator as RW-1, thereafter its evidence was closed.

Evidence of respondent No.1 was closed by the order of Court on 5.3.2013.

The claimant did not lead any evidence in rebuttal.

After hearing the arguments, the Tribunal decided issues No. 1 and 2 in favour of the claimants and against the respondents. Issue No.3 was decided in favour of the claimants and against respondent No.2. Resultnatly, vide award dated 19.5.2014, passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri, the claim petition was accepted and a compensation of Rs.9,03,391/- was awarded to the claimants – Anju, Ayush and Ram Rati, with interest @ 7.5% per annum from the date of filing of claim petition till actual realisation, the liability of both the respondents to pay this amount was held to be joint and several. However, claimant No.4 Karam Singh, father of the deceased was not held entitled to get any share in the compensation. As directed by the Tribunal, out of the total compensation amount awarded, 50% thereof was to be given to claimant Anju, whereas remaining 50% to claimant No. 2 i.e. minor son and claimant No.3 mother of the deceased, equally. It was further directed that on realisation, 50% of the amount be disbursed to claimant Anju and Ram Rati alongwith upto date interest be deposited in their names in fixed deposit scheme in any of the Nationalized bank for a period of one year, whereas the amount of share of minor claimant be deposited with some Nationalized bank in fixed deposit in the name of minor till the period he attains majority.

The petitioner – claimant Karam Singh, felt aggrieved by the award and he has filed the present appeal before this Court, notice of which was given to the respondents, however, only respondent No.2 – Insurance company and respondents No.3 and 4 Anju and minor respondent Ayush through his mother Anju had put in appearance. Whereas respondent No.1 Niranjan Singh – driver and owner of the offending motorcycle as well as proforma respondent No.5 Ram Rati had not appeared and were proceeded against ex parte.

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

A perusal of the award goes to show that the Tribunal has wrongly deprived Karam Singh, father of the deceased of any share in the compensation. The Tribunal had given undue importance to the fact that claimant No.4 Karam Singh had not appeared in the witness box to explain his position, regarding his dependency upon the deceased Manish. The reason so given is solely unconvincing. While deciding the claim petition under Section 166 of the Act, summary procedure is followed and strict rules of procedure and evidence are not applicable there. Each and every claimant is not required to step into the witness box and to get his/her statement recorded. Therefore, depriving Karam Singh of the share in compensation, simply for the reason that he had not appeared before the Tribunal to get his statement recorded, was uncalled for.

Another reason given for depriving Karam Singh from his share in the compensation, was that he was not dependent upon earnings of the deceased Manish and was an agriculturist, having approximately 4 acres of land and prior to employment of his son, Manish, household expenses were being borne from the agricultural income. Reference to deposition of PW-6 Ram Rati, wife of the claimant Karam Singh in that regard has been given. The whole approach of the Tribunal in that regard was misconceived and misdirected. The Tribunal in the award itself had admitted that deceased was an able bodied person and in that way at least being a labourer, his earnings could be taken to be Rs.5,500/- per month. As it comes out that he was contributing to the family expenses and family comprised of parents of deceased, his wife and minor son, in that way the deceased was supplementing the income of the family and his father was of course a gainer as a result thereof. With the household expenses being borne from the agricultural income as well as earnings of the deceased, every member of the family has to be taken as dependent upon the the amount earned by the deceased, there is nothing to show that the deceased used to spend his earnings upon himself, his wife, his minor son and mother only and ignoring his father in the process. Therefore, in my considered view, such observations of the Tribunal are not sustainable and are liable to be set aside. It is ordered accordingly.

In that way, Karam Singh, father of the deceased is also held entitled to get a share in the compensation.

Learned counsel for the appellant has further pointed out that the Tribunal has not added any amount towards future prospects.

I have gone through the impugned award carefully. The Tribunal has taken age of the deceased to be 24 years, assessing his monthly income to be Rs.5,500/-, without making any addition towards future prospects.

In view of Apex Court judgment ***National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009,*** 40% of the earnings is to be added towards future prospects, since the deceased was aged less than 40 years. In that way the monthly income of the deceased comes out to Rs.5,500 + 2,200 = Rs.7,700/-.

In view of the number of family members dependent upon the deceased, 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. By doing that, the monthly dependency of the claimants comes out to Rs. 7,700 – 2,567 = Rs.5,133/-. Accordingly, the annual dependency is calculated as

Rs.5,133 x 12 = Rs.61,596/-.

Considering the age of the deceased as 24 years, the multiplier of 18 has been rightly applied by the Tribunal. By doing that, therefore, the total dependency comes out to Rs. 61,596 x 18 = Rs.11,08,728/-.

In terms of ratio of authority in ***Pranay Sethi's case (Supra)*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- on funeral expenses, totalling Rs.70,000/- under the conventional Heads.

In that way, the total compensation comes out to Rs.11,08,728 + 70,000 = Rs.11,78,728/-.

The claimants are also held entitled to get Rs.94,391/- on account of medical bills. Thus, the total compensation payable to the claimants comes out to Rs.11,78,728 + 94,391 = Rs.12,73,119/-.

The Tribunal has awarded compensation of Rs. 9,03,391/-, which compensation is enhanced and the claimants are held entitled to compensation amounting to Rs.12,73,119/- with interest @ 7.5% per annum, from the date of filing of claim petition till actual realisation. The compensation amount would be apportioned among the claimants as follows :-

Anju - wife	- 50%
Ayush -minor son	- 25%
Ram Rati - mother	- 15%
Karam Singh- father	- 10%

The other terms and conditions shall remain the same as in the original award.

With the above modifications in the impugned award, the appeal is accepted partly

(H.S. Madaan)
5.11.2019 **Judge**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No