IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5692 of 2019(O&M)

Date of decision: 16.9.2019

New India Assurance Co. Ltd. …..Appellant

VERSUS

Somti Devi and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Lalit Garg, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 31.05.2019 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been assessed on account of death of Naresh in a motor vehicular accident that took place on 08.01.2017.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation. It is argued that Naresh and Narinder occupants of car bearing No.CH-01-AY-1874 sustained injuries that proved fatal. It is argued that Anand Kaushal, driver of the aforesaid car, lodged DDR that occurrence took place as a stray dog suddenly appeared before the car resulting in accident. It is argued that claimants examined one Pawan Chaudhary son of Radhey Sham to substantiate their plea that accident is the result of rash and negligent driving of offending vehicle. It is argued that Pawan Chaudhary did not lodge FIR against Anand Kaushal nor produced a copy of his statement purported to be recorded by the police at the spot. It is further submitted that in the statement of Anand Kaushal, there is no reference to presence of Pawan Chaudhary at the time of unfortunate occurrence. According to counsel, Pawan Chaudhary being a resident of Mohali and claimants with regard to death of Narinder also being residents of Mohali has been introduced later to support cause of the claimants and extract compensation from the insurance company.

To assail quantum of compensation, it is argued that Tribunal has wrongly deducted $1/4^{th}$ for personal and living expenses of the deceased in place of $1/3^{rd}$ as father of the deceased cannot be held dependent upon his earning. The Tribunal has applied multiplier of 16 but as the deceased was 35 years 6 months old, admissible multiplier is 15.

Anand Kaushal, driver of ill-fated car lodged DDR to say that occurrence in question took place as a stray cattle appeared in front of the car. Meaning thereby that even Anand Kaushal had admitted the happening of the accident in which Naresh and Narinder, occupants of the offending car sustained fatal injuries. The very fact that driver of the vehicle could not control the car on appearance of a stray cattle, prima facie, proves rashness and negligence on his part. As has been rightly held by the Tribunal that Anand Kaushal being on the steering wheel of the car in question had every reason to twist the facts in order to escape his civil and criminal liability. The claimants examined Pawan Chaudhary to prove that accident is result of rash and negligent driving of offending vehicle. Even Pawan Chaudhary has deposed that a stray cattle appeared in front of the car resulting in occurrence. There is nothing on record suggestive of the fact that Pawan Chaudhary is related to the claimants much less he would be a beneficiary in case the claim is allowed. Anand Kaushal did not appear in the witness box to substantiate his version recorded in the DDR or counter testimony of Pawan Chaudhary. Insurance company has failed to adduce any evidence that the present is a case of collusion between the claimants and driver/owner of the offending vehicle. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. That being so, I do not find any reason to interfere in findings of the Tribunal on issue No.1 based upon materials on record and accordingly same are affirmed.

The challenge against quantum of compensation is also not meritorious and liable to be rejected. Two separate claim applications were filed with regard to death of Naresh, one by parents of the deceased and other by the widow and minor child of the deceased. Father of the deceased is stated to be 77 years old. Counsel for the insurance company has failed to point out any materials on record on the basis whereof father can be denied loss of dependency. On the contrary, it has been proved on record that subsequent to death of Naresh, another child is born out of his conjugal relationship with Babli Rani and as such deduction for personal expenses to the extent of $1/4^{th}$ cannot be faulted with.

The deceased was 35 years 6 months old. Admissible multiplier for the age group 31-35 is 16 and 36-40 to be 15. As the deceased was less than 36 years of age, the Tribunal has rightly applied multiplier of 16. In this view of the matter, I do not find any reason to interfere in assessment of compensation by the Tribunal.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall cause prejudice to the claimants if they file an appeal for enhancement of compensation.

SEPTEMBER 16, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no