IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5449-2016(O&M)
Date of decision:-2.9.2019

Rambha Devi and others

...Appellants

Versus

Ravinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Madan Gupta, Advocate
for the appellants.

Mr.Vinod Gupta, Advocate
for respondent No.3.

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H.S. MADAAN, J.

One Ram Raj Singh son of Sh.Sukhdev Singh Patel having date of birth 2.4.1961 unfortunately met his end in a road side accident, which took place on 28.11.2011 at about 12:10 p.m. in the area of Doraha, statedly on account of rash and negligent driving of Indica car bearing registration No.HR-01-AC-2160 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Ravinder Singh. The legal heirs of such deceased i.e. his widow – Smt.Rambha Devi, aged about 45 years, son – Rahul Kumar, aged about 22 years and minor daughter –

Baby Subham aged about 10 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents Ravinder Singh – driver, Surjit Kaur – owner and New India Assurance Company Ltd., Ambala Cantt. - insurer of the offending vehicle before Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal), claiming compensation to the tune of Rs.25 lakhs along with interest.

Notice of the claim petition was given to the respondents, who put in appearance and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was allowed by the Tribunal vide award dated 11.3.2016 and compensation of Rs.11,44,000/- along with interest @ 6% per annum from 17.8.2013 for the reason that the claim petition remained pending for service of respondent No.1 till that date, till actual realization payable by all the respondents jointly and severally was awarded to the claimants. It was further observed that if that amount was paid within three months from the receipt of copy of the award, then the rate of interest would be 6% per annum otherwise it would be 9% per annum. It was further observed that after deducting Rs.1 lakh from the total compensation amount for payment on account of loss of consortium to claimant No.1, the remaining amount would be divided between three claimants equally, whereas share of minor claimant would be deposited in the shape of FDR carrying maximum rate of interest.

The claimants felt aggrieved by the said award and have approached this Court by way of filing an appeal seeking enhancement of compensation awarded to them. Notice of the appeal was issued to the respondent No.3 - insurance company, which has put in appearance through counsel.

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

The Tribunal took the age of deceased to be more than 50 years, in view of the fact that date of birth of the deceased as reflected in his driving licence Ex.P7 was 2.4.1961 and on the date of accident 28.11.2011, he was more than 50 years old but less than 55 years of age, therefore, multiplier of 11 was adopted.

Learned counsel for the claimants submits that since the deceased had not yet completed the age of 51 years, therefore his age should have been taken as 50 years and multiplier of 13 should have been adopted instead of 11. In support of his that contention, he has referred to judgment ***Shashikala and others Versus Gangalakshmamma and another, 2015(2) RCR(Civil)510***. In that case when the deceased was aged about 45 years, 5 months and 28 days, his age was taken to be 45 years and multiplier of 14 was used.

However, learned counsel for the insurance company has vehemently opposed the contentions.

After hearing learned counsel and going through the record, I find that in terms of judgment ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***, when the deceased was in the age group of 46 to 50 years then multiplier of 13 and if the deceased was in age group of 51 to 55 years, then multiplier of 11 should be applied. In this case, the deceased was aged more than 50 years, 7 months and 26 days in that way nearing 51 years. Therefore, multiplier of 11 was rightly applied by the Tribunal. As regards the authority referred to by learned counsel for the appellants/claimants, as per facts of the authority, the deceased was aged 45 years, 5 months and 28 days i.e. less than 45 ½ years. It was for that reason, his age was taken to be 45 years for the purpose of use of multiplier. Here the deceased was aged more than 50 ½ years and on that account multiplier of 11 was rightly used and no fault can be found with the same.

Next coming to the income of the deceased. While assessing income, the Tribunal has kept in mind the version of the claimants that the deceased was working as a Foreman in a concern titled as M/s Mitter Fastners at G.T. Road, Doraha and was earning Rs.17,500/- per month as a salary as per salary certificate Ex.P1. However, the Tribunal was fully justified in making reference to the income tax returns brought on file by the claimants and while referring to income tax return for the year 2010-11 Ex.P2, the total income was taken as Rs.1,71,582/- and average income to be Rs.14,298/-. No fault can be found with the Tribunal in doing so. The income tax return definitely carries more authenticity than a salary certificate issued by a private concern.

The Tribunal has given an arbitrary increase of Rs.3,702/- to the claimants towards future prospects, taking the monthly income of deceased to be Rs.18,000/- per month. But only 10% raise could have been given towards future prospects. In terms of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was in the age group of 50 to 60 years and was self employed or on fixed salary, an addition of 10% is to be applied towards future prospects. Doing that the monthly income of the deceased comes out to be Rs.14,298 + 1429 = Rs.15,727/-.

Keeping in view the number of legal heirs/dependents upon earnings of the deceased, 1/3 of the amount is to be deducted towards personal and living expenses of the deceased, In that way, the dependency of the claimants comes out to Rs.10,485/-.(15727 – 5242) per month, annual dependency comes out to Rs.10485 x 12 = Rs.1,25,820/-. The Tribunal has used multiplier of 11, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs.1,25,820 x 11 = 13,84,020/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs.13,84,020 + 70,000 = 14,54,020/-.

It has not been seriously challenged by learned counsel for the appellants and is rather proved on file that the deceased himself contributed to the accident by his negligence in crossing the road without ensuring that the coming traffic was at a safe distance. 1/3rd of the amount of compensation shall have to be deducted for that reason. Thus the total compensation comes out to Rs.9,69,347/-(14,54,020 – 4,84,673).

The Tribunal has awarded a sum of Rs.11,44,000/-. Thus there is absolutely no scope for enhancement of compensation.

Since the respondents have not filed any cross appeal or cross-objections, I do not find it proper to reduce the awarded amount.

I find that the amount awarded was appropriate and reasonable. The compensation can certainly be not taken to be on lower side and no case for enhancement of the same is made out.

Finding no merits in the present appeal, the same stands dismissed.

2.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No