IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7062-2015(O&M)
Date of decision:-14.5.2019

Avtar Singh and another

...Appellants

Versus

Kuldeep Singh and others

...Respondents

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

Present: Mr.P.S. Chahal, Advocate for
Mr.G.S. Nagra, Advocate
for the appellants.

Mr.Neeraj Madaan, Advocate
for respondents No.1 and 2.

Mr.Varun Sharma, Advocate for
Mr.S.P. Dhamija, Advocate
for respondent No.3.

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H.S. MADAAN, J.

The claimants Sh.Avtar Singh aged about 65 years and his wife Smt.Swaran Kaur aged about 60 years had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Kuldeep Singh – driver, Dalbir Singh – owner and United India Insurance Company Ltd. - insurer of Tipper bearing registration No.PB-12-B-1197 (hereinafter referred to as the offending vehicle), claiming compensation on account of death of their son – Shamsher Singh in a motor vehicular accident.

As per version of the claimants on 24.11.2014, Shamsher

Singh was going to Rupnagar from his village on his motorcycle bearing registration No.HP-14-C-(T)-8999; that he was driving the motorcycle with proper care and caution; that at about 9:00 a.m. when he reached near Manjit Dhaba at Tax Barrier, Ghanauli, the offending vehicle came from opposite side being driven at a very high speed without blowing horn in a rash and negligent manner and struck against the motorcycle of Shamsher Singh, resultantly, he fell down and suffered multiple injuries; that he was first taken to Civil Hospital, Rupnagar from where he was referred to PGI, Chandigarh; that keeping in view his serious condition, he was got admitted in PGI, Chandigarh. However, he died during his treatment on 25.11.2014; that postmortem examination on the dead body of Shamsher Singh was conducted at PGI, Chandigarh; that formal FIR No.140 dated 26.11.2014 was registered at Police Station Sadar, Rupnagar with regard to the accident in question. According to the claimants, they were fully dependent upon the earnings of the deceased and with his death they have suffered great loss.

On notice all the three respondents appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 filed a separate written statement. In the joint written statement filed by respondents No. and 2, they took up a plea that the claim petition was not maintainable; that the claim petition was bad for non-joinder and mis-joinder of the necessary parties; that the claimants had not come to the Court with clean hands. On merits, the material assertions in the claim petition were denied submitting that a false FIR had been got registered by the claimants in connivance with the local police and the offending vehicle was not involved in any such accident.

In the written written statement filed on behalf of respondent No.3 – insurance company, it also raked up various legal objections that the claimants had not come to the Court with clean hands and they had suppressed the material facts; that the owner of the offending vehicle did not inform the insurance company about the accident; that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of the accident and he was not holding proper documents of the vehicle like RC, insurance, permit, fitness certificate etc. at the time of the alleged accident; that the owner and insurance company of the motorcycle being driven by the deceased were necessary parties. Such respondent denied that the claimants were legal heirs of the deceased Shamsher Singh or were dependent upon him. The answering respondent challenged the locus standi of the claimants to bring the petition. On merits material assertions in the claim petition were denied.

In the end, all the three respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:

1. Whether on 24.11.2014 the accident took place with Tipper bearing No.PB-12-B-1197 due to rash and negligent driving of Kuldeep Singh respondent No.1, which resulted into death of Shamsher Singh? OPP.
2. Whether the claimants are entitled to receive compensation? If so, to what amount and from whom? OPP.

3. Whether respondent No.1 – driver of the offending Tipper was not holding a valid and effective driving licence and other documents at the time of alleged accident? OPR-3.
4. Whether the claim petition is not maintainable? OPR.
5. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, while allowing the petition vide award dated 10.8.2015, the Tribunal awarded compensation of Rs.5,29,000/- along with interest @ 8% per annum from the date of filing of the petition till realization, for which all the respondents were jointly and severally liable, besides cost of the petition to the claimants. However, the insurance company was granted recovery rights on payment of compensation amount. The manner in which the compensation is to be apportioned was also given in the award.

Feeling that the compensation awarded to him was on lower side, the claimants have filed the present appeal, notice of which was given to respondents, who put in appearance through counsel.

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

The Tribunal on analysis of the evidence adduced before it has come to the conclusion that the accident in question in which the deceased had suffered injuries to which he had succumbed had taken place due to rash and negligent driving of the offending vehicle by respondent No.1.

Coming to issue No.2 with regard to entitlement of the claimants to claim compensation, the Tribunal took up note of the fact that Shamsher Singh was unmarried and issueless and his occupation was taken as a driver and his monthly income to be Rs.8,000/-; his age was taken to be 40 years and 50% of the amount was added towards future prospects.

However, though the monthly income of the deceased taken to be Rs.8,000/- is adequate but in the land mark judgment on the subject i.e. ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** it has been provided that if the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be warranted and where the deceased was below the age of 40 years, an addition of 25% where the deceased was between the age of 40 to 50 years. Therefore, making addition of 25%, the monthly income of the deceased is calculated as Rs.10,000/-(8,000 + 2,000).

Keeping in view the fact that the deceased was a bachelor, 50% should be deducted as personal and living expenses in terms of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.*** Doing that the dependency of claimants comes out to Rs.5,000/- per month, annual dependency comes out to Rs.5,000 x 12 = Rs.60,000/-.

The Tribunal has used multiplier of 7 keeping in view the ages of the claimants, who happened to be parents of the deceased. But in ***National Insurance Company Limited Versus Pranay Sethi and***

Ors.(supra), it has been observed that multiplier is to be used keeping in view the age of the deceased and not that of his legal representatives. Therefore, applying multiplier of 14, the compensation payable comes out to Rs.60,000 x 14 = 8,40,000/-.

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 and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs.8,40,000 + 30,000 = Rs.8,70,000/-.

The Tribunal has awarded a total sum of Rs.5,29,000/- as compensation along with interest @ 8% per annum from the date of filing of the claim petition till realization.

In that way, the enhanced amount comes to Rs.3,41,000/- (8,70,000 - 5,29,000). The appellants/claimants shall be entitled to recover the enhanced amount from respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing appeal till actual payment. The other terms and conditions given in the relief clause of the original award regarding apportionment shall apply to the enhanced amount as well.

With regard to the recovery rights granted to the insurance company, the Tribunal has observed that the respondent No.1 was not competent to drive the offending vehicle since he was driving tipper which is a heavy goods vehicle, whereas driving licence Ex.R2 possessed by the respondent No.1 was not for driving heavy goods vehicle. The

Tribunal observing that tipper is a heavy goods vehicle and driving licence possessed by respondent No.1 was not for driving heavy goods vehicle has granted recovery rights to respondent No.3 – insurance company and no fault can be found with such observations.

With such modification, the appeal is allowed partly.

14.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No