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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.6082 of 2016 (O&M)
Date of Decision: 09.05.2019

Bano

Appellant

Versus

Satbir Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Namit Khurana, Advocate for the appellant.

Mr. G.C. Shahpuri, Advocate for respondents No.1 and 2.

Ms. Vandanaa Malhotra, Advocate for respondent No.3.

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AVNEESH JHINGAN, J (Oral):

The present appeal has been preferred seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] for death of Akram, aged 27 years. The Tribunal awarded ₹6,87,000/- alongwith interest @ 8% per annum as compensation vide award dated 20.02.2016 passed in MACT Case No.29 of 2014. The appellant is mother of the deceased.

The driver, owner and insurer of tractor trolley (i.e. TATA AIG General Insurance Company Ltd.) bearing registration No. HR-78-5211 [hereinafter referred to as 'offending vehicle'] have been arrayed as respondents No.1 to 3 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 04.09.2013, Ravi Kumar alongwith Akram had gone to village Chhutmalpur on the offending vehicle. While coming back, the offending vehicle was being driven by Satbir Singh (respondent No.1 before the Tribunal) in a rash and negligent manner. When they reached near culvert near Khushnewar, the offending vehicle turned turtle, as a result, Akram sustained injuries and died at the spot. FIR No. 166 was registered at P.S. Fatehpur Sadar, Saharanpur. Mother of the deceased filed a claim petition and pleaded that deceased was 27 years old at the time of accident and was working as a labourer.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The insurer of the offending vehicle was exonerated from the liability to pay compensation as the Tribunal had recorded the finding that the deceased was travelling on the Mudguard of the Tractor i.e. offending vehicle, in breach of the conditions of Insurance Policy and Rules of the Road Regulations, 1989. The income of the deceased was assessed as ₹6,000/- per month; ½ deduction for self-expenses was made and multiplier of '17' was applied. ₹50,000/- were awarded for loss of love & affection and ₹25,000/- were awarded for funeral expenses.

Heard learned counsel for the parties and perused the paper book.

The issue raised by learned counsel for the appellant is that no future prospects have been awarded and no amount has been awarded for loss of estate. He further argues that the Tribunal erred in totally exonerating the insurer instead of fastening liability on it to pay compensation and then granting recovery rights.

Learned counsel for the owner and driver defends the award and states that Insurance Company is liable to pay the compensation but could not challenge the fact that the deceased was travelling on the Mudguard of the offending vehicle.

Learned counsel for the insurer argues that the amount awarded for funeral expenses is on the higher side and no amount should have been awarded for loss of love & affection. She defended exoneration of insurer stating that there was breach of Policy's condition, the deceased was travelling as a gratuitous passenger and there was also violation of the Rules of the Road Regulations, 1989.

There is no dispute with regard to loss of dependency calculated by the Tribunal as ₹6,12,000/-. While awarding the compensation, future prospects have to be awarded as per decisions of the Supreme Court in cases of ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480***. The deceased was 27 years old at the time of accident and fell in the category of self-employed or having a fixed income, hence 40% future prospects are awarded i.e. 40% of ₹6,12,000= ₹2,44,800/-

As the quantum of compensation is being revisited, it would be appropriate that the amounts under the conventional heads are awarded as per decision of the Supreme Court in ***Pranay Sethi's case*** *(supra)*. The claimants are also entitled to ₹15,000/- each for funeral expenses and loss of estate. No amount is awarded for loss of love & affection. The amount of ₹75,000/- awarded by the Tribunal is reduced to ₹30,000/-.

The net effect is that the amount awarded by the Tribunal is enhanced by ₹1,99,800/-.

The claimant shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The contention raised by learned counsel for the appellant that insurer company should be directed to pay compensation to the claimant and given right to recover from the owner and driver of the offending vehicle deserves acceptance.

The Supreme Court in ***Manuara Khatun and Others Vs. Rajesh Kr. Singh and others AIR 2017 SC 1204*** held as under:-

> *"22. In view of the foregoing discussion, we are of the view that the direction to United India Insurance Company (respondent No. 3) - they being the insurer of the offending vehicle which was found involved in causing accident due to negligence of its driver needs to be issued directing them (United India Insurance Company-respondent*

No.3) to first pay the awarded sum to the appellants (claimants) and then to recover the paid awarded sum from the owner of the offending vehicle (Tata Sumo)-respondent No.1 in execution proceedings arising in this very case as per the law laid down in Para 26 of Saju P. Paul's case quoted supra."

The Supreme Court in ***Shivaraj Vs. Rajendra and another AIR 2018 SC 4252,*** held as under:-

"*10. At the same time, however, in the facts of the present case the High Court ought to have directed the Insurance Company to pay the compensation amount to the claimant (appellant) with liberty to recover the same from the tractor owner, in view of the consistent view taken in that regard by this Court in* ***National Insurance Co. Ltd. Vs. Swarna Singh & Ors., 2004 (2) RCR (Civil) 114; (2004) 3 SCC 297, Mangla Ram Vs. Oriental Insurance Co. Ltd., (2018) 5 SCC 656, Rani & Ors. V. National Insurance Co. Ltd. & Ors., 2018(3) RCR (Civil) 979; 2018(9) Scale 310*** *and including* ***Manuara Khatun and Others v. Rajesh Kumar Singh and Others, 2017(2) RCR (Civil) 108: (2017) 4 SCC 796.*** *In other words, the High Court should have partly allowed the appeal preferred by the respondent No.2. The appellant may, therefore, succeed in getting relief of direction to respondent No.2 Insurance Company to pay the compensation amount to the appellant with liberty to recover the same from the tractor owner (respondent No.1)."*

As there is no challenge to the fact that the offending vehicle was insured at the time of accident and it was duly proved that the accident was result of rash and negligent driving of the offending vehicle, in view of the decisions of the Supreme Court, the findings recorded by the Tribunal with regard to liability to pay is modified, the insurer shall pay compensation to the claimant and would have right to recover the same from owner and driver of the offending vehicle.

Disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

May 09, 2019
pankaj baweja

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes