IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
-.-

FAO 9436 of 2014 (O&M)
Date of decision: 06.02.2019

National Insurance company Limited ......*Appellant*

versus

Anjali Sharma and others ......*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. S S Sidhu, Advocate
for the appellant

Mr. Suveer Sheokand, Advocate
for respondents No. 1 to 3

Mr. Pardeep Sharma, Advocate for
Mr. B S Makkar, Advocate
for respondent No. 4

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 25.04.2014 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been assessed on account of death of Ashwani Kumar Sharma in a motor vehicular accident that took place on 29.07.2012.

Counsel for the appellant - insurance company would inform that the appeal has been preferred only to assail findings of the Tribunal on issue No. 2 whereby rashness and negligence has been attributed to Munish Kumar, driver of Car bearing No. PB O8BP 0583 in which the deceased was travelling. He would argue that one of the travellers of ill fated Car who happened to be brother of deceased Ashwani Kumar Sharma got recorded DDR No. 6 on 29.07.2012 Ex.P3 wherein he had stated that occurrence in question took place because of a stray animal having suddenly appeared in front of Car and as a result thereof, Car got swerved and went into the ditches and hit the tree, resulting in serious injuries to Shri Ashwani Kumar Sharma. He would further apprise the Court that in the DDR, it has also been mentioned that occurrence is an act of God and nobody is responsible for the accident. It is vehemently argued that in view of first version recorded by Ravinder Sharma vide DDR Ex. P3, plea of the claimants and testimony of Ravinder Sharma (PW2) with regard to occurrence being the result of rash and negligent driving becomes highly doubtful and liable to be rejected.

Counsel representing the claimants has supported findings of the Tribunal on issue No. 2 with the submissions that Ravinder Sharma supported cause of the claimants in view of his testimony recorded before the Tribunal. In support of his contention, he has relied upon judgment of this Court in **Varinderjit Singh vs Tajinder Singh and others, 2008 (1) R.C.R. (Civil) 67,** wherein it has been held that under the scheme incorporated in the Motor Vehicles Act, 1988 relating to the enquiries by the Motor Accidents Claims Tribunal, the proceedings are summary in nature and strict rules of evidence are not applicable. The job of the Tribunal is to ascertain as to whether the accident has been caused out of use of motor vehicle. This fact has been admitted by the driver and owner of the vehicle, thus, no enquiry was needed in this regard.

Be that as it may, there is no denial that Ashwani Kumar

Sharma sustained injuries while travelling in the aforesaid Car, driven by Munish Kumar at about 2.50 a.m. Even if first version recorded by Ravinder Sharma is taken into consideration, it is sufficient to show that after mid-night at about 2.50 a.m., the Car was driven at such a high speed that Munish Kumar could not control the same on appearance of a stray animal and as a result, it fell into the ditches and hit the trees, resulting in serious injuries to Ashwani Kumar Sharma. This apart, testimony of Ravinder Sharma before the Tribunal is more than sufficient to prove that accident is the result of rash and negligent driving of offending vehicle. If Ravinder Sharma initially made a statement that no one was responsible for the accident but later he made a different statement, to sustain the claim, re-assessment of his own judgment of what caused the accident cannot be faulted with. In this context, reference can be made to judgment of this Court **Bansi and another vs Vikas (FAO No. 7213 of 2010, decided on 29.08.2012**). As such, I do not find any reason to interfere in findings of the Tribunal on issue No. 2 whereby rashness and negligence has been attributed to Munish Kumar, driver and owner of offending Car.

Counsel for the claimants would pray for enhancement of compensation as the Tribunal has not extended benefit of increase in income for future prospects, applied appropriate multiplier etc. It is argued that even if the claimants have not preferred an appeal for enhancement of compensation nor filed cross objections by invoking Order XLI Rule 22 of the Code of Civil Procedure, the Court in appeal can enhance compensation to allow just and reasonable compensation in compliance with the provisions of Section 166 of the Act. In support of his contention, he has relied upon judgment of this Court '**ICICI Lombard General Insurance Company Limited vs Ranjna and others'** *(FAO No.4415 of 2012, decided on 01.08.2017)*.

Counsel representing the insurance company, on the contrary, has controverted plea of the claimants for grant of additional compensation with the submissions that they have been adequately compensated by the Tribunal. It has also been argued that the claimants have neither filed appeal nor cross objections raising their claim for enhancement.

The Appellate Court can modify the judgment passed by the trial Court in order to ensure that the award assessing compensation is in consonance with the legislative intent that the claimants are allowed just and reasonable compensation by the Tribunal.

The Tribunal has awarded compensation of Rs.30,37,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.28,060/- rounded off Rs.28,000/-
Deduction for personal expenses	$1/3^{rd}$
Multiplier	13
Loss of dependency	Rs.29,12,000.00
Loss of consortium to widow	Rs.1,00,000.00
Funeral expenses	Rs.25,000.00

The Tribunal in para 17 of the award, has noticed that the deceased was Area Business Manager with German Remedies division of Cadila Healthy Care Limited in Ludhiana Branch. He had income of Rs.40,000/- per month. Suresh Pal Sharma (CW3) was examined to prove the last salary certificate Ex PW3/A, Form No. 16, Form No. 12BA Ex.PW3/B to Ex PW3/D. The Tribunal has noticed that carry home salary of the deceased was Rs.28,060.00 per month and accordingly his income has been assessed. The deceased was paid certain allowances i.e. House Rent Allowance, Transportation Allowance, Children Education Allowance , Medical Allowance. As benefit of all these allowances was available to family of the deceased, the same cannot be deducted while computing loss of dependency when examined in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited vs. Indira Srivastava and others 2008(1) RCR (Civil) 359*** *and* ***Manasvi Jain vs. Delhi Transport Corporation 2014(3) RCR (Civil) 313.*** Total gross salary of the deceased was Rs.32,011.00, rounded off to Rs.32,000.00 and the annual salary is Rs.3,84,000.00. After deducting income tax Rs.18,952.00, the net annual income of the deceased comes to Rs.3,65,048.00.00. As the deceased was more than 40 years but less than 50 years of age, admissible increase in income for future prospects would be 30%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In view of the above, loss of dependency is calculated at Rs.41,12,878.00 (Rs.47,45,624/- i.e. 3,65,048 x 13 + Rs.14,23,687.00 (30% addition) – Rs.20,56,437/- (1/3rd deduction).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), admissible in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is Rs.41,82,874/- and additional amount is Rs.11,45,874.00 (Rs.41,82,874.00 - Rs.30,37,000.00) payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants in the ratio 20:65:15. The amount falling to share of the minor shall be invested in FDR till she attains the age of majority or for a period of three years, whichever is later.

For the foregoing reasons, the appeal stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

06.02.2019
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