IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-6861-2016(O&M)
Date of decision:-10.9.2019

New India Assurance Company Ltd.

...Appellant

Versus

Naresh Kaur and others

...Respondents

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

Present: Mr.Vinod Gupta, Advocate
for the appellant.

Mr.Shaurya Punj, Advocate for
Mr.TVS Lehal, Advocate for respondents No.1 to 4.

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H.S. MADAAN, J.

CM-23888-CII-2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 2 days in filing of the appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 2 days in filing of the appeal stands condoned.

FAO-6861-2016(O&M)

On account of death of Sh.Surinder Singh, aged about 56 years, who was working as Veterinary Doctor at Government Animal Hospital, village Bakhu Majra in a motor vehicular accident, which took place on 24.5.2015 at about 11:30 p.m. in the area of village Kheri Salabatpur, statedly on account of rash and negligent driving of Tata

Indigo car bearing registration No.HR-03G-9609 (hereinafter referred to as the offending car) by respondent No.1 – Tejinder Singh, the legal representatives of deceased, namely, his widow - Smt.Naresh Kaur, aged about 52 years, son – Harpreet Singh, aged about 27 years, daughter Jaspreet Kaur, aged about 23 years and mother – Smt.Charan Kaur, aged about 97 years had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Tejinder Singh – driver, Sanjeev Kapoor and Raj Kumar – owners and New India Assurance Company, Mohali - insurer of the offending car, claiming compensation to the tune of Rs.80 lakhs.

On getting notice, all the respondents except respondent No.2 had put in appearance. Respondent No.2 was proceeded against ex parte, whereas remaining respondents offered a contest by way of filing written statements. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

After contest, the Motor Accidents Claims Tribunal, SAS Nagar(Mohali) (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 22.7.2016, awarded compensation of Rs.36,36,000/- along with interest @ 6% per annum from the date of filing of the petition till actual realization observing that the rate of interest would increase to 9% if the amount of compensation was not deposited within two months. The claimant No.1 being widow was given 60%, petitioner No.2 - major son was given 10%, petitioner No.3 – major daughter was given 20% and petitioner No.4 – mother was given remaining 10% of the compensation amount. The details of compensation awarded were as follows:

Sr.No.	Heads of claim	Amount
1.	Monthly income	Rs.42,400/-
2.	Add 15% of income	Rs.42,400 + 6,360/-=48,760/-
3.	1/3 deduction	Rs.48,760/- - 16,253 = 32,507
4.	Multiplicand	58
5.	Multiplier	9
6.	Loss of dependency	Rs.32,507 x 9 x 12=35,10,756/-
7.	Loss of consortium	Rs.1,00,000/-
8.	Funeral expenses	Rs.25,000/-
	Total	Rs.36,35,756 (rounded off to Rs.36,36,000/-

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents and respondents No.1 to 4 have put in appearance through counsel.

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

Learned counsel for the appellant – insurance company has contended that the Tribunal has not taken into consideration the fact that deceased was a Government employee, aged about 58 years on the verge of retirement, therefore there was no likelihood of any future increment or future prospects but even then the Tribunal had added 15% as future prospects; the fact that son of deceased has been appointed on the compassionate ground was also ignored.

However, learned counsel for the claimants has defended the award stating that the deceased was a Veterinary Doctor and after his retirement, he could have done private practice earning a considerable amount therefrom, as such 15% of the amount was rightly added towards future prospects.

After hearing learned counsel for the parties, I find that the Tribunal taking the date of birth of deceased as 16.12.1957 from the copy of his driving licence as well as certificate issued by Deputy Director, Animal Husbandry, Ropar has observed that he was aged about 58 years on the date of accident; the deceased was working as Veterinary Inspector and at the time of his death, he was posted as CVD Bakhu Majra, Tehsil Chamkaur Sahib, District Ropar. From the salary certificate Ex.P3 duly proved by PW1 Satwinder Singh, Sr.Assistant in the office of Deputy Director, Animal Husbandry, Ropar, it could be taken that the deceased was getting gross salary of Rs.53,000/- around. The Tribunal had considered the contention raised on behalf of the respondents that son of the deceased, namely, Harpreet Singh had been given employment on compassionate grounds but then it was found that as deposed by RW2 Gursharan Singh, Sr. Assistant in the office of Director, Animal Husbandry, Punjab, Harpreet Singh had been appointed as a temporary employee for a period of two years of basic salary of Rs.10,300/- per month. Referring to the law laid down by the Apex Court in ***Vimal Kanwar and other Versus Kishore Dan and others, 2013(2) RCR(Civil) 945***, it was held that the same could not be deducted from the compensation payable. Another judgment titled ***Reliance General Insurance Co. Versus Poonam*** FAO No.1451/2012 decided on 18.7.2016 by this Court has been referred wherein it had been observed that although other allowance, which the deceased was receiving would not be deductable from his gross salary though income tax was to be deducted. The Tribunal had deducted 20% of the amount from gross salary of the deceased towards income tax, working the remainder to be Rs.42,400/- per month. 15% of the amount was rightly added towards future prospects since as already observed the deceased after retiring from the Government service could have earned a considerable amount from private practice as a Veterinary Doctor or from some other avocation. The Tribunal has excluded major son of the deceased from the list of dependents, in that way, 1/3rd of the amount was deducted on account of personal and living expenses of the deceased finding the monthly dependency of the claimants to be Rs.32,507/-. The Tribunal has dealt with the plea of the insurance company for applying the split multiplier by giving valid reasoning. For ready reference, the relevant para No.16 of the Award in that regard is reproduced as under:

> *16. Learned counsel for respondent No.4 argued that the deceased was 58 years old and was about to retire in a few years, therefore, split multiplier needs to be applied. But Hon'ble Apex Court in the case of* ***Puttamma & Others Vs. K.L.Narayana Reddy and another 2014(1) RAJ-1****, had observed that in the absence of specific reason, Court should not apply the split multiplier. Reference here can be made to the judgment in case* ***Smt. Piari & Others Vs. Sharanjit Singh and Others FAO No.654 of 2010 decided on 7.10.2013****, wherein it was observed that "It is true that after 2 years and 4 months, deceased would have retired from Government job. Thereafter he would have been getting the pension which may be half salary or even less than that.*

> *However, the question is as to whether the deceased can be presumed to sit idle after his retirement and depend upon his pension only. In my opinion, it would be the case that Beldar who is in being throughout the service. He cannot sit and would be working after his retirement and would take his income to the level of his salary which he might have been getting at the time of retirement. Moreover, the split multiplier is not appreciated by Hon'ble Supreme Court of India in case Sri K.R.Madhusudan case Supra. In these circumstances, I hold against split multiplier and take a smooth uniform multiplier of 9 in this case as is laid down in Sarla Verma Supra". Therefore, this contention raised by learned counsel for respondent No.3 holds no ground in the light of aforecited pronouncements as in the instant case the deceased was a veterinarian and could not have been expected to sit idle after retirement.*

One more submission made on behalf of the appellant – insurance company was that the name of the eye-witness is not mentioned in the FIR and even FIR was lodged against unknown vehicle and unknown person and the vehicle has been planted later on. But then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

The Tribunal has rightly come to the conclusion that the death of Surinder Singh was caused in a motor vehicular accident due to rash and negligent driving of offending car by respondent No.1 – Tejinder Singh. The finding is based on enough cogent and convincing oral and documentary evidence adduced by the claimants. The ocular evidence included statement of PW3 Manmohan Singh, who claimed that he had taken lift in the offending car and the accident was caused due to rash and negligent driving of the car by respondent No.1. There was no reason to disbelieve his testimony. Coupled with that as per challan Ex.P6, respondent No.1 had been sent up to face trial for causing the accident by his rash and negligent driving of the offending car. Ex.P7 showed that he has since been charge-sheeted. Though respondent No.1 had appeared in the witness-box as RW1 and had denied the accident but he had admitted that he had given lift to an unknown person and dropped him at village Chaunta, which makes presence at the spot of PW3 Manmohan Singh to be natural and probable. In his cross-examination, he admitted that the offending car had been taken into possession by police and he is facing trial under Sections 279 and 304-A IPC. He further stated that he had not filed any application before the higher authorities with regard to his alleged false implication in the present case. Therefore, no fault can be found with the findings given by the Tribunal in favour of the claimants in that regard.

However, one thing to be noticed is that the Tribunal has awarded a sum of Rs.1,00,000/- to the claimant No.1 – Smt.Naresh Kaur, widow of deceased on account of loss of consortium and Rs.25,000/- to claimants as funeral expenses. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.,***

2017(4) RCR(Civil)1009, 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 thus comes out to Rs.35,10,756 + 70,000 = 35,80,756/-.

The Tribunal has wrongly awarded compensation of Rs.36,36,000/-. The same is reduced to Rs.35,80,756/-. Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company at the earliest.

With such modification, the appeal is allowed partly with costs.

10.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No