IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7212-2016(O&M)
Date of decision:-1.5.2019

Murari and another

...Appellants

Versus

Deepak Tayal and another

...Respondents

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

Present: Mr.Sunny Bhardwaj, Advocate
for the appellants.

Mr.Tushar Gera, Advocate
for respondent No.1.

Mr.M.B. Jain, Advocate
for respondent No.2.

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H.S. MADAAN, J.

On account of death of Parveen aged about 17 years, a student of ITI, in a motor vehicular accident, which took place on 6.1.2014 at about 9:15 a.m. on Meham – Beri road near village Balamba statedly on account of rash and negligent driving of Maruti Swift D'zire car bearing registration No.HR-22H-3011 (hereinafter referred to as the offending vehicle) by Deepak Tayal – respondent No.1, the parents of deceased, namely, Sh.Murari aged about 53 years – father and

Smt.Krishna aged about 50 years – mother, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Deepak Tayal – driver and owner and ICICI Lombard General Insurance Co. through its General Manager – insurer of the offending vehicle, claiming compensation with interest and cost.

As per the case of the claimants on 6.1.2014 at about 8:45 a.m. deceased Parveen along with his friend Ashok was going from village Kelanga to ITI, Meham on a motorcycle having registration No.HR-12L-1746; that the motorcycle was being driven by Parveen with Ashok being a pillion rider; that at about 9:15 a.m., when the motorcycle in question reached near village Balamba on Meham-Beri road, then respondent No.1 – Deepak Tayal while coming on the offending vehicle driving it in a rash and negligent manner from Kishangarh side hit the motorcycle being driven by Parveen, as a result both the riders namely Parveen and Ashok fell down and suffered injuries; that Parveen had suffered multiple serious injuries and his friend Ashok also suffered injuries; a passerby shifted them to Civil Hospital, Meham, where the attending doctor declared Parveen to be brought dead; that Ashok had lodged an FIR No.5 dated 6.1.2014 for the offences under Sections 279, 337, 304-A IPC with Police Station Meham.

On getting notice, both the respondents appeared and filed written statements contesting the claim petition. In the written statement submitted on behalf of respondent No.1, he denied involvement of the car driven by him in the accident, rather stated that as per FIR, the accident had taken place with an unknown vehicle; that the FIR also did not disclose the type and kind of vehicle. According to the answering respondent, it was in fact a hit and run case. The answering respondent further contended that his car was insured with respondent No.2. Refuting the remaining allegations, the answering respondent prayed for dismissal of the claim petition.

In the written statement submitted on behalf of respondent No.2 – insurance company, it opposed the claim petition coming up with a plea that respondent No.1 was not holding a valid and effective driving licence at the time of accident and the terms and conditions of the insurance policy were violated. Such respondent also prayed for dismissal of the claim petition.

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

1. Whether the accident in question causing the death of Parveen took place due to rash and negligent driving of the offending vehicle bearing registration no.HR-22H-3011 by respondent no.1, as alleged? OPP.
2. If issue no.1 is proved, whether the petitioners are entitled to any compensation if so to what amount and from whom? OPP.
3. Whether the claim petition is liable to be dismissed on the grounds, taken by the respondent no.3 in its written statement? OPR.
4. Relief.

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

In order to prove their case, the petitioner/claimant No.1 got his statement recorded as PW1 besides examining Sh.Ashok as PW2.

On the other hand, respondent No.1 tendered in evidence his driving licence as Ex.R1, a copy of registration certificate as Ex.R2 and a copy of insurance policy as Ex.R3.

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 30.7.2016, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents, who put in appearance through counsel.

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

It may be mentioned here that the Tribunal while dealing with issue No.1 has observed in para No.14 as under:

> *14. As per the claimants, the accident had taken place on 6.1.2014 at about 9:15 a.m. It is admitted on the record that the FIR (Ex.P1) was lodged on the same day by Ashok (PW2). The case of the claimants is that Ashok and the deceased were riding the same motorcycle. Claimants have led no evidence that Ashok suffered any injury in the accident. Claimants have neither proved on the record the MLR of Ashok nor led any other evidence to establish that he had suffered any injury in the accident. That apart in the FIR, Ashok neither disclosed the registration number of the offending vehicle nor the name of the driver. How he came to know about the registration number of the offending vehicle,*

has remained unexplained on the record. Ashok in the FIR also did not disclose the make of the offending vehicle, which was involved in the accident. Claimants have also not examined the Investigating Officer of the criminal case. There is no material on the record as to how the Investigating Officer had come to the conclusion that respondent No.1 was the driver of the offending vehicle and the alleged offending vehicle was involved in the accident. It is not understandable as to how claimants came to know about the offending vehicle and its driver. Allegedly, the accident took place on 6.1.2014 but a perusal of report under Section 173 Cr.P.C. reveals that the driver of the offending vehicle i.e. respondent No.1 was arrested on 21.2.2014. I am of the considered view that the claimants failed to establish that the accident took place on account of the rash and negligent driving of vehicle No.HR-22-H-3011 by respondent No.1. Accordingly, I find this issue against the claimants.

However, I find that the whole approach of the Tribunal has been wrong. The findings of the Tribunal on issue No.1 are obviously erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who gets killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice. The claimants had successfully proved that respondent No.1 was author of the accident by his rash and negligent driving of the offending vehicle, as a result of which Parveen had lost his life, whereas Ashok had suffered injuries. The claimants had led more than sufficient evidence to establish that respondent No.1 – Deepak Tayal was author of the accident by rash and negligent driving of the offending vehicle. The claimants had led oral as well as documentary evidence. The oral evidence comprised of statement of Ashok, eye witness as PW2, whereas documentary evidence being in form of copy of FIR Ex.P1, certified copy of report under Section 173 Cr.P.C. Ex.P2, certified copy of charge-sheet Ex.P3, copy of post-mortem report Ex.P4. In rebuttal respondent No.1 had placed on record copy of licence Ex.R1, copy of RC Ex.R2 and a copy of insurance policy Ex.R3. The respondent No.1 did not appear in the witness box to state on oath that he was not author of the accident by rash and negligent driving of the offending vehicle. Therefore, evidence adduced by the claimants has gone unrebutted. It should have been relied upon by the Tribunal but was wrongly discarded by it. It stands fully established on record that the accident causing death of Parveen was due to rash and negligent driving of the offending vehicle by respondent No.1 – Deepak Tayal. Therefore, the finding of the Tribunal on issue No.1 is reversed and this issue is decided in favour of the claimants and against the respondents.

Coming to issue No.2, the Tribunal had not assessed any compensation payable. In the instant case from the record, it comes out that the deceased was aged about 21 years at the time of his death. He is stated to be a student of ITI. In the post-mortem report, his age is mentioned to be 17-18 years. In absence of any rebuttal evidence, the age of the deceased is taken as such. Since the deceased was not working, his notional income has to be worked out.

Learned counsel for the claimants has referred to authority ***Chief Works Manager, Southern Railway Carriage Works Versus V. Manimekalai, 2015(88) RCR(Civil) 653*** by a Division Bench of Madras High Court wherein while dealing with a case considering grant of compensation, it was observed that Education should be given due respect and Rs.20,000/- per month was taken as income of the deceased.

Learned counsel for the insurance company has referred to authority ***Simar Kaur Versus Pawan Kumar and others, 2014(1) PLR 831*** by a Co-ordinate Bench of this Court wherein while dealing with aspect of payment of compensation tot he legal representatives of the victim of road side accident, who was a student of 10+1 class, it was observed that since income of deceased was being taken on assumption basis, there was no chance to apply principle of addition of income in name of future prospects and notional income of the deceased was taken to be Rs.4,000/- per month. However, this judgment does not help the insurance company due to different facts. In the instant case, the deceased was 17-18 years of age and a student of ITI, who could be expected to start working soon after completing his studies earning handsome amount, whereas as per facts of the authority the deceased was a student of 10+1 class and he was to take 4-5 years in coming up age of earning. Furthermore, the deceased getting technical education was expected to see a rise in his career with increase in his monthly income. Therefore, some addition towards future prospects deserve to be made in the instant case.

In the present case, I find that considering all facts and circumstances, it would be proper and appropriate to take monthly income of deceased to be Rs.6,000/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6,000 + 2,400 = Rs.8,400/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** deduction of 50% to be made towards personal expenses. Doing that the dependency of claimants comes out to Rs.4,200/- per month, annual dependency comes out to Rs.4,200 x 12 = Rs.50,400/-.

In terms of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.***(supra) multiplier of 18 would be appropriate. Doing that the compensation payable comes out to Rs.50,400 x 18 = 9,07,200/-.

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. 9,07,200 + 30,000 = 9,37,200/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

Of the compensation awarded, the liability shall be joint and several of both the respondents.

This issue is also decided in favour of the claimants.

The findings of the Tribunal on issue No.3 are obviously wrong. Thus findings on issue No.3 are reversed and this issue is decided against the respondent.

Thus the appeal filed on behalf of the appellants/claimants stand allowed.

1.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No