IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-728-2016
Date of decision:-11.7.2019

Meenakshi and others

...Appellants

Versus

Raj Kumar and others

...Respondents

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

Present: Mr.Vinod K.Kanwal, Advocate for
Mr.Ashit Malik, Advocate for the appellants.

Mr.Deepak Suri, Advocate
for respondent No.3.

Mr.Vinod Pundhir, Advocate for
Mr.D.K. Prajapati, Advocate
for respondent No.4.

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H.S. MADAAN, J.

On account of death of Sh.Lalit Mohan Garg in a road side accident, which took place on 1.6.2014 at about 3:30 p.m. in the area of Police Station Rajgarh, District Churu (Rajasthan) statedly on account of rash and negligent driving of Alto Car No.HR-09-C-0702 by Raj Kumar – respondent No.1, legal representatives of Lalit Mohan Garg, namely his wife – Mrs.Meenakshi, aged about 33 years, minor daughter – Baby Piyushi Aggarwal, aged about 8 years, minor son – Master Levish Mohan Garg, aged about 5 years and father – Dharampal Garg aged about 70 years, had brought a claim petition under Section 166 of Motor Vehicles Act against respondents i.e. Raj Kumar – driver, Suresh Kumar Jindal – registered owner and New India Assurance Company Ltd. - insurer of

Alto Car bearing registration No.HR-09-C-0702 as well as against Man Mohan Garg – driver and owner and Royal Sundran Alliance Insurance Company Ltd. - insurer of Ecosport Vehicle bearing registration No.HR-08R-7491, claiming compensation.

Since some other persons travelling in the ill-fated car along with the deceased had also suffered injuries in that very accident, therefore they had also filed separate claim petitions. In all four claim petitions were disposed of by Motor Accidents Claims Tribunal, Kaithal vide award dated 31.10.2015 and a compensation of Rs.11,60,600/- along with interest @ 7% per annum from the date of filing of the claim petition till its realization was awarded to claimants of claim petition bearing MACT Case No.89 of 2014 i.e. the present appellant. The compensation amount was directed to be apportioned amongst the claimants as per details given in the award. Respondents No.1 to 3 were found to be liable to pay this amount jointly and severally.

Feeling aggrieved by the said award, the petitioners/claimants of MACT Case No.89 of 2014 have filed an appeal before this Court, notice of which was given to the respondent No.3 – insurance company, which put in appearance through counsel. However, respondent No.4 also appeared through counsel.

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

The Tribunal while assessing the compensation has taken the age of deceased at the time of accident to be 42 years considering the year of birth mentioned in his Adhar Card to be 1972, whereas the accident had taken place on 1.6.2014. The version of the claimants was that the deceased was running a Kiryana shop and earning Rs.30,000/- per month. In support of that, they had examined Sh.Kamal Sharma, Tax Assistant, Income Tax Office, Kaithal, who had produced the income tax returns of the deceased i.e. for the years 2009-10 as Ex.PA, 2010-11 as Ex.PB, 2011-12 as Ex.PC, 2012-13 as Ex.PD, 2013-14 as Ex.PE and for the year 2014-15 as Ex.PF.. However, the Tribunal found that submission of income tax return was not an authentic proof of income of the deceased and that since the sale tax returns or purchase and sale bills of shop of deceased had not been proved in evidence, therefore, the income tax returns could not be relied upon to assess the income of the deceased. The claimants had not proved any document to show that deceased was running a kiryana store in the name of Garg Provisional Store, therefore, the Tribunal took the income of the deceased to be Rs.8,100/- per month.

Learned counsel for the claimants has contended that the Tribunal fell in error in rejecting the income tax returns, which should have been relied upon to assess the income of the deceased. In support of his such contention, he has referred to authority ***United India Insurance Co. Ltd. Versus Indiro Devi and Ors., 2018(3) RCR(Civil) 455*** by the Apex Court.

This submission by learned counsel for the appellant does merit attention. The income tax returns filed on behalf of deceased before his death are a relevant piece of evidence and are required to be taken into consideration while assessing his income. The Tribunal for the reasons, which are unconvincing has wrongly ignored that income tax returns. A perusal of such returns, which are duly proved on record goes to show that in the income tax return for the year 2009-10(Ex.PA), the deceased is shown to be Proprietor of M/s Garg Provisional Store, Kaithal and his occupation as Kiryana Merchant, his gross income as such is shown to be Rs.1,48,750/- per annum. In the income tax return for the year 2010-11 Ex.PB, his gross income is shown to be Rs.1,74,307/-, which means that the income was in the range of Rs.1,50,000/- to Rs.1,75,000/- per annum, say Rs.12,000/- to Rs.15,000/- per month. But then there is no evidence to show that the kiryana business being carried out by the deceased has got closed. It being so, the efforts put in by the deceased on account of management of business are to be taken into consideration. The figure taken by the Tribunal is on somewhat lower side. Therefore, I find it proper and appropriate to quantify the work put in by the deceased to manage the kiryana business at Rs.10,000/- per month.

The Tribunal has omitted to add amount for future prospects to the monthly income of the deceased. 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 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.10,000 + 2,500 = Rs.12,500/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** in such an eventuality, deduction of 1/4th of the amount towards self expenses is to be made. Doing that the dependency of claimants comes out to Rs.9,375/- per month, annual dependency comes out to Rs.9,375 x 12 = Rs.1,12,500/-.

The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,12,500 x 14 = 15,75,000/-.

The Tribunal has granted a sum of Rs.20,000/- as funeral expenses, Rs.1,00,000/- on account of love and affection ot the claimants and claimant Meenakshi was also granted Rs.20,000/- on account of loss of consortium. However, 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, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 15,75,000 + 70,000 = 16,45,000/-.

The Tribunal has awarded compensation of Rs.11,60,600/-.

In this way, the enhanced amount comes out to Rs.4,84,400/- 16,45,000 - 11,60,600). The claimants would be entitled to receive this amount with interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,84,400/-. The other terms and conditions given in the relief clause by the Motor Accidents Claims Tribunal, Kaithal shall apply to the enhanced amount as well.

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

11.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No