IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7651-2016 (O&M)
Date of decision: 04.12.2019

Smt. Pinki Devi and others

...Appellant(s)

Versus

Amit Sharma and another

...Respondent(s)

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

Present: Mr. Rajesh K. Sharma, Advocate for the appellant(s).

Ms. Monica Jangra, Advocate for
Ms. Vandana Malhotra, Advocate for respondent No.2.

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H.S. MADAAN, J.

Briefly stated facts of the case are that Smt. Pinki Devi-widow, aged about 28 years, Ankita-minor daughter aged about 04 years, Raj Kumari, aged about 46 years-mother, Jiwan Kumar, aged about 20 years-brother, Phoolwati Kumari, aged about 14 years-minor sister, Sonu Kumar, aged about 10 years-minor son of Jiwach Sahni @ Jivachhi Sahni had filed a claim petition under Section 166 of the Motor Vehicles Act against respondents Amit Sharma -driver and owner and SBI General Insurance Company Ltd., Mumbai-insurer of Hyundai I-10 car bearing registration No.DL-8CL-6250 (for short ' the offending vehicle') claiming compensation of Rs.50 lacs on account of death of Jiwach Sahni @ Jivachhi Sahni in a motor vehicular accident.

As per version of the claimants, on 25.05.2015, deceased

Jiwach Sahni @ Jivachhi Sahni along with his brother was going from his house towards Shudh Vaishno Punjabi Dhaba, Village Farouli, District Ambala for joining his duty. At about 10.15. pm, when they had reached in front of bus stand, Mohra and had crossed the road reaching the service lane of Ambala to Delhi G.T. Road, in the meanwhile, the offending vehicle came from Ambala Cantt. side being driven by respondent No.1 Amit Sharma in a rash and negligent manner and at a high speed, which hit the deceased. As a result of this accident, the deceased was flung high in the air and he fell on the front wind screen of the offending vehicle, in the process, suffering multiple grievous injuries. He was removed to Civil Hospital, Ambala Cantt but the doctors declared him as brought dead. The matter was reported to the police and formal FIR in that regard was got registered.

On being put to notice, both the respondents appeared and filed separate written statements. In the written statement filed by respondent No.1, he denied the assertions made in the petition, contending that no accident had taken place due to rash and negligent driving of respondent No.1 and a false and frivolous FIR had been registered against him, just to grab the compensation.

In the written statement by filed respondent No.2-insurance company, it had contended that respondent No.1 driver of the offending vehicle was not having a valid and effective driving license at the time of alleged accident and the insured had violated the terms & conditions of the insurance policy. The factum of the accident as alleged by the claimants in the petition was denied, stating that a false FIR has been got registered against respondent No.1 by the claimants in collusion with the police. In the end, both the respondents prayed for dismissal of the claim petition.

No replication was filed. On pleadings of the parties, the following issues were framed:-

1. Whether the accident in question causing death of Jiwach Sahni @ Jivachhi Sahni took place due to rash and negligent driving of Hyundai I-10 car bearing registration No.DL-8CL-6250 by respondent No.1, as alleged? OPP.
2. If issue No.1 is proved, to what amount of compensation, the petitioners are entitled to and from whom?OPP.
3. Whether the insurance company is not liable to pay any compensation, in view of the preliminary objections raised in the written statement and whether there has been a breach of terms and conditions of the policy of insurance? OPR-2.
4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal'), vide award dated 04.05.2016, decided issue No.1 in favour of the claimants and against the respondents, holding that the accident in question took place due to rash and negligent driving of Hyundai I-10 car bearing registration No.DL-8CL-6250 by respondent No.1, whereas, issues No.2 & 3 were decided in favour of the claimants and against the respondents, holding that petitioners/claimants were entitled to get compensation of Rs.10,02,000/-. In addition to that, petitioners No.2 & 3 would also be entitled to separate amount of

Rs.50,000/- each for loss of love and affection and petitioner No.1 would be entitled to Rs.50,000/- for loss of consortium. The petitioners were found entitled to get interest @ 7.5% p.a. from the date of filing of claim petition till actual realization. The liability to pay this amount was held to be joint and several of both the respondents. The claim petition was allowed accordingly. The mode and manner of payment of compensation and its apportionment are duly incorporated in the impugned award.

The petitioners/claimants were, however, dissatisfied with the amount of compensation awarded to them by the Tribunal and have approached this Court, by way of filing the present appeal, notice of which was given to the respondents, however, only respondent No.2 has put in appearance to offer a contest.

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

In this case, the Tribunal had taken the age of deceased to be 29 years and his monthly income was assessed to be Rs.7500/-. The Tribunal has not added any amount towards future prospects. With the passage of time, the monthly income of deceased was expected to increase. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the deceased was aged less than 40 years, an increase of 40% is to be made towards future prospects. In that way, the monthly income of the deceased is calculated as Rs.10,500/- (7500+3000).

Considering the number of dependent family members, 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. Doing that, the monthly dependency of the claimants comes out to Rs.7000 (10500-3500), annual dependency Rs. 84,000/-.

Considering the age of the deceased, multiplier of 17 was rightly applied by the Tribunal. In that way, the total compensation is worked out to Rs.14,28,000/-.

The Tribunal has awarded a sum of Rs.50,000/- each to petitioners No.2 & 3 under the head loss of love and affection and petitioner No.1 widow of the deceased has also been granted that amount for loss of consortium. In view of the judgment **Pranay Sethi's** (supra), the claimants are entitled to get Rs.15,000/- on account of loss of estate, Rs.15,000/- as funeral expenses and petitioner No.1-widow is entitled to get Rs.40,000/- on account of loss of consortium. Total amount under conventional heads comes out to Rs.70,000/-. Adding that amount, the total compensation payable is arrived at Rs.14,98,000/-. The Tribunal has awarded compensation of Rs.11,70,000/- to the claimants. Thus, an additional compensation payable to the claimant is arrived at Rs.3,28,000/- (Rs.14,98,000 – 11,70,000/-) along with interest @ 7.5% p.a., from the date of filing of appeal till actual realization. The liability to pay this amount would be joint and several of the respondents. The apportionment, mode and manner of payment shall remain the same as directed by the Tribunal in the impugned award.

The appeal stands partly allowed.

04.12.2019 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No