IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

F.A.O. No. 1719 of 2017
DATE OF DECISION :- September 03, 2019

Mamta Devi and others ...Appellants

Versus

Sachin Kumar and another ...Respondents

F.A.O. No. 1327 of 2017

New India Assurance Company Ltd. ...Appellant

Versus

Mamta Devi and others ...Respondents

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

Present:- Mr. Sumit Gupta, Advocate for the appellants in F.A.O. No. 1719 of 2017 and for respondent Nos. 1 to 5 in F.A.O. No. 1327 of 2017.

Mr. R.C. Kapoor, Advocate for respondent No. 2-Insurance Company in F.A.O. No. 1719 of 2017 and for the appellant in F.A.O. No. 1327 of 2017.

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By this order, I shall dispose of two appeals bearing F.A.O. No. 1719 of 2017 filed on behalf of the claimants and F.A.O. No. 1327 of 2017 filed on behalf of the Insurance Company.

On account of death of Uma alias Parveen, in a road side accident which took place on 15.1.2016 at about 12 midnight, near Richi Rich Hotel, Gharaunda, statedly on account of rash and negligent driving of Crane bearing registration No. HR-45-B-6211 by respondent No. 1 Sachin Kumar, legal representatives of deceased namely his wife Smt. Mamta Devi, aged about 29 years, mother Smt. Johna, aged about 57 years, minor daughters Baby Anamika, aged about 6 years, Anshu, aged about 5 ½ years and Anshika, aged about 3 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Sachin Kumar-owner and driver of Crane bearing registration No. HR-45-B-6211 and The New India Assurance Co. Ltd, Karnal-insurer of Crane bearing registration No. HR-45-B-6211 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs. 50 lacs along with interest at the rate of Rs.24% per annum.

On notice, both the respondents appeared and offered a contest. Issues were framed on merits. The parties were afforded adequate opportunities to lead evidence.

After trial the Motor Accident Claims Tribunal, Karnal vide award dated 17.10.2016 accepted the application and granted a compensation of Rs.24,19,020/- to the claimants along with interest at the rate of 9% per annum. The directions with regard to apportionment of compensation amount among claimants and other terms and conditions are detailed in the said award.

The claimants felt dissatisfied with the amount of compensation granted to them by the Tribunal and have brought an appeal before this Court. Similarly respondent Insurance Company was also aggrieved by the award and has filed a separate appeal.

Notice of both the appeals were issued to the respondents who have put in appearance.

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

Learned Tribunal on the basis of evidence adduced before it has returned a finding that respondent No. 1-Sachin Kumar was author of the accident in which deceased Uma alias Parveen lost his life by rash and negligent driving of the offending vehicle. The verdict is well reasoned and does not call for any interference. With regard to the compensation awarded, the Tribunal has taken age of the deceased to be 28 years as mentioned in his postmortem report, treating him as a casual labourer and in light of instructions contained in letter No. 7084/F/41/6057(Fin.-Genl) dated 21.11.1941 regarding rate of wages of various employer paid out of contingencies in Karnal District w.e.f. 1.3.2015 to 28.2.2016 for a casual labourer as 9560/- per month took the income of deceased as such. However, the Tribunal has allowed 50% of the amount towards future prospects.

In terms of the judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** raise of 40% should have been allowed. Doing that the monthly income of the deceased is worked out to be Rs.13,384/- (9560 + 3824).

Keeping in view the number of dependents the earnings of deceased 1/4th amount is to be deducted towards his personal and living expenses that amount comes out to Rs.3346/- (13,384 x ¼). In that way the dependency of the claimants is worked out to be Rs. 10,038/- (13,384 - 3346). The annual dependency comes out to Rs. 1,20,456/- (10,038 x 12). The multiplier of 17 is to be used. Doing that the total compensation is found to be Rs.2,047,752/- (120,456 x 17). The Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and conveyance charges and Rs. 1,00,000/- towards loss of estate and for love and affection. Rs.1 lac was awarded to claimant No.

1 Mamta for loss of consortium which in view of ratio of '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** is on higher side and the claimants are entitled to get total amount of Rs.70,000/- under those Heads. Adding that sum total compensation is calculated as to Rs. 21,17,752/- (2,047,752 + 70,000). The Tribunal has awarded compensation of Rs.24,19,020/-, which is liable to be reduced to Rs.21,17,752/-.

With such modification, the appeal filed by the Insurance Company bearing F.A.O. No. 1327 of 2017 is allowed partly. The compensation of Rs.24,19,020/- granted by the Tribunal is reduced to Rs. 21,17,752/-. The interest has been granted at the rate of 9% which is also reduced to 7.5%. The other terms and conditions with regard to apportionment of compensation amount etc. shall remain the same as given in the original award.

Consequently the appeal filed by the claimants bearing F.A.O. No. 1719 of 2017 for enhancement of compensation stands dismissed. The excess amount, if any, paid by the Insurance Company be refunded to it by the claimants at the earliest otherwise the Insurance Company shall be entitled to recover the amount by filing execution application before the Tribunal.

(H.S. MADAAN)
JUDGE

September 03, 2019
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No