IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7786-2016(O&M)
Date of decision:-19.7.2019

Iffco Tokio General Insurance Co. Ltd.

...Appellant

Versus

Husana and others

...Respondents

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

Present: Mr.Rajneesh Malhotra, Advocate for the appellant.

Mr.Vipul, Advocate for Mr.Y.P. Markan, Advocate for respondents No.1 and 2.

Mr.Rahul Deswal, Advocate for respondents No.3 and 4.

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H.S. MADAAN, J.

Mrs.Husana, aged about 42 years – mother and Sh.Abdul Majid aged about 45 years – father of Junaid, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Rakesh Kumar – driver, Rajbir Singh – owner and Iffco Tokio General Insurance Company – insurer of truck bearing registration No.HR-45B-9585(hereinafter referred to as the offending vehicle), claiming compensation to the tune of

Rs.50 lakhs.

As per the case of the petitioners/claimants, their son Junaid was aged about 18 years at the time of accident and he was working as an Ayurvedic Vaid, earning Rs.20,000/- per month; that on 8.9.2015 at about 10:00 a.m., Junaid along with Shakir was going from Mohali to his home in village Ibrahim, Tehsil Sarsawa, District Saharanpur(U.P.) on Hero Honda Splendor Plus motorcycle bearing registration No.UP-11AV-2127; that one Jubair Ahmad along with Arsid was coming behind them on a separate motorcycle; that at about 5:00 p.m. when they reached under the railway bridge near village Saneta, then the offending vehicle being driven by respondent No.1 – Rakesh Kumar in a rash and negligent manner without blowing horn came from behind and struck into motorcycle of Junaid, as a result Junaid and Shakir fell down on the road and got crushed under the truck; that both of them died at the spot; that FIR No.218 dated 9.9.2015 for the offences under Sections 279, 304-A and 427 IPC was registered at Police Station Sohana against respondent No.1 Rakesh Kumar on the basis of statement of Jubair Ahmad.

On getting notice, the respondents put in appearance and offered a contest. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 21.7.2016, learned Motor Accident Claims Tribunal, SAS Nagar (Mohali) allowed the claim petition and awarded compensation of Rs.9,97,000/- to the claimants along with interest @ 6% per annum from the date of filing of the petition till date of realization, payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award. It was also directed that if the amount was not paid within two months then the rate of interest would increase up to 9% per annum.

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, who put in appearance through counsel.

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

The Tribunal on the basis of facts and circumstances of the case and evidence available on the record had taken age of the deceased approximately to be 18 years around considering his age mentioned in the postmortem report Ex.P1. However, the version of the claimants that the deceased was working as an Ayurvedic Vaid, earning Rs.20,000/ per month was rejected holding that no document had been placed on record by them in support of that contention and further as deposed by PW2 Jubair Ahmad that deceased had studied up to 5th - 6th class, in that way, he could not be expected to be working as an Ayurvedic Vaid, though for computing his income, he could be equated with a daily wager and his monthly income was assessed as Rs.6,000/-. The Tribunal had allowed 50% of that amount on account of future prospects. However, such amount allowed is on somewhat higher side. Since as per ratio of authority ***National Insurance Company Limited Versus Pranay Sethi***

and Ors., 2017(4) RCR(Civil)1009 in such an eventuality an addition of 40% of the established income of deceased is to be allowed towards future prospects. Therefore, only 40% of the amount can be added. 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*** where the deceased was a bachelor, deduction towards self-expenses is to be taken as 50%. Doing that the dependency of claimants comes out to Rs.4,200/- per month, annual dependency comes out to Rs.4200 x 12 = Rs.50,400/-.

The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. 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/-.

As regards issue No.3, the Tribunal by giving valid reasons has come to the conclusion that respondent – insurance company had failed to prove that the licence possessed by respondent NO.1 was not legal or valid or that vehicle was being driven in violation of terms and conditions of the insurance policy. I do not see any reason to differ with the Tribunal on that point.

The Tribunal has wrongly awarded compensation of Rs.9,97,000/-. The same is reduced to Rs.9,37,200/-. The claimants would be entitled to get interest @ 6% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.9,37,200/-. 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 at the earliest.

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

19.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No