IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1996 of 2017 (O&M)
Date of decision : 16.10.2019

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National Insurance Company Limited, Chandigarh
through Manager
................Appellant

vs.

Sushila and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present : Mr. Ram Avtar, Advocate for the appellant

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H. S. Madaan, J.

On account of suffering injuries by Subhash, in a motor vehicular accident, which took place on 17.5.2015, at about 9.00 P.M. in the area near village Kachhwa, Police Station Sadar, Karnal, statedly on account of rash and negligent driving of motorcycle bearing registration No. HR-05-AD-0942 by Ashok Kumar – respondent No.1, to which he succumbed on 22.5.2015, legal heirs of such deceased, namely, Smt. Sushila – wife, Ritu - minor daughter, Ritik and Ankit – minor sons, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, (hereinafter to be referred to as 'the Act'), against respondents i.e. Ashok Kumar –

driver, Parveen Kumar – owner, and National Insurance Company Limited, Karnal – insurer of motorcycle No. HR-05-AD-0942 (hereinafter to be referred as 'the offending motorcycle'), claiming compensation to the tune of Rs.25 lacs.

On being put to notice, respondents No. 1 and 3 put in appearance through counsel and filed separate written statements, contesting the claim petition, whereas respondent No.2 did not appear despite service and as such was proceeded agaisnt ex parte. In the separate written statements filed by the appearing respondents, they contested the claim petition. However, on conclusion of the trial, the Motor Accident Claims Tribunal, Karnal, vide award dated 11.11.2016, accepted the claim petition and awarded a compensation of Rs.20,61,000/- to the petitioners-claimants, payable by all the three respondents jointly and severally, with interest @ 9% per annum from the date of filing of claim petition, till actual realization. The details with regard to apportionment and manner of payment are given in the award itself.

However, the respondent – Insurance company felt aggrieved by the said award and has filed the present appeal before this Court, notice of which was given to the respondents. However, none of such respondents put in appearance in this Court and have been proceeded against ex parte.

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

Learned Tribunal, taking into consideration the fact that petitioners-claimants had led sufficient cogent and convincing, oral as well as documentary evidence, has come to the conclusion that respondent No. 1 Ashok Kumar was author of the accident by his rash and negligent driving of the motorcycle. While coming to this conclusion, the trial Court has considered the eye witness account provided by PW-1 Ram Parkash, finding it to be natural and worthy of reliance; FIR No. 324 dated 23.5.2015, for offences under Sections 279 and 304-A IPC was registered with Police Station, Sadar, Karnal, with regard to the accident; the testimony of PW-4 Ashok Kumar, Criminal Ahlmad, who had brought the summoned record of case titled 'State vs. Ashok Kumar', to show that he had been charge sheeted for causing the accident, after filing of challan, was considered. The post mortem report of the deceased has also been taken into consideration. The evidence adduced by the claimants, had gone unrebutted. Ashok Kumar – respondent No.1, driver of the offending motorcycle, had not appeared in the witness box to depose that he had not caused the accident by rash and negligent driving of his motorcycle. Such finding is correct and appropriate and does not call for any interference. It being so, Ashok Kumar – driver, Parveen Kumar - owner and National Insurance Company Limited, Karnal – being insurer, of the offending motorcycle are jointly and severally liable to pay the compensation. The Tribunal has specifically observed in paragraph No. 25 of its judgment that no violation of terms and condition of Insurance policy had been found. Even otherwise, learned counsel for the appellant-

Insurance company could not point out that any term and condition of Insurance policy was violated, which might have resulted in absolving the Insurance company of its liability to pay the compensation. Therefore, all the three respondents were rightly held to be liable to pay the compensation to the claimants, who are legal heirs/legal representatives of the deceased, on account of death of the deceased in a roadside accident.

Now coming to the quantum of compensation, the Tribunal has taken the age of the deceased to be 34 years, considering his age mentioned in the ration card Exhibit P-10 issued on 17.4.2006 as 25 years. The age mentioned in the Voter's Identity card Exhibit P-11, as on 1.1.2007 is 25 years. The death of Subhash had taken place on 22.5.2015, which means that he was aged 34 years at that time.

Considering the statement of PW-3, Rajesh Kumar, Manager (Human Resources), Dunar Foods Limited, Karnal, who had brought the summoned record, regarding employment and salary of Subhash, his avocation was taken as Security Guard and monthly salary as Rs.8,500/-. The Tribunal was justified in doing so. However, when it came to making addition on account of future prospects, the addition made to the extent of 50%, is somewhat on higher side. In terms of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** when the deceased was aged upto 40 years, an addition of 40% is to be made towards future prospects. By doing that, the monthly income of the deceased is assessed as Rs.8,500 + 3,400 = Rs.11,900/-. The annual income thus comes to Rs.11,900 x 12 = Rs.1,42,800/-. Considering the number of dependents/family members, 1/4th amount of this amount has to be deducted towards personal and living expenses of the deceased. By doing that, the dependency of the claimants comes out to Rs.1,42,800 - 35,700 = Rs.1,07,100/-.

Keeping in view age of the deceased, the multiplier of 16 was rightly applied by the Tribunal. In that way, the total compensation is worked out to Rs.1,07,100 X 16 = Rs. 17,13,600/-.

However, the Tribunal was a bit too liberal with the claimants in granting Rs.2,25,000/- under the conventional heads. In terms of ratio of authority ***Pranay Sethi's case (Supra),*** the claimants are entitled to get Rs.15,000/- towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- on funeral expenses, totalling Rs.70,000/-. Thus the total compensation payable to the claimants comes to Rs.17,13,600 + 70,000 = Rs.17,83,600/-.

The Tribunal has granted compensation of Rs.20,61,000/-, which is reduced to Rs.17,83,600/-. The interest granted by the Tribunal @ 9% per annum on this amount is also on a little higher side. The same is reduced to 7.5% per annum, in view of authority in ***Pranay Sethi's case (Supra).*** The other terms and conditions shall remain the same as in the impugned award.

Therefore, the appeal is accepted partly and the compensation amount is reduced to Rs.17,83,600/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The excess amount, if paid to the claimants, be refunded to the appellant – Insurance company by them, otherwise, the appellant – Insurance company would be entitled to recover it by moving an execution application before the Tribunal.

(H.S. Madaan)
Judge

16.10.2019
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No