IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3693-2017(O&M)
Date of decision:-27.9.2019

Vidya Devi and another

...Appellants

Versus

Jitender and others

...Respondents

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

Present: Mr.S.K. Liberhan, Advocate
for the appellants.

Mr.Punit Jain, Advocate
for respondent No.3.

****

H.S. MADAAN, J.

CM-12042-CII-2017 &
CM-12043-CII-2017

CM-12042-CII of 2017 has been filed under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 133 days in re-filing of the appeal and CM-12043-CII-2017 has been filed under Section 5 of the Limitation Act for condonation of delay of 203 days in filing of the appeal.

Heard.

For the reasons mentioned in the applications, the same are allowed and delay of 133 days in re-filing of the appeal and delay of 203 days in filing of the appeal stand condoned.

FAO-3693-2017(O&M)

Notice of motion be issued to the respondent – Insurance company. Sh.Punit Jain, Advocate has accepted notice on behalf of such insurance company.

Briefly stated, facts of the case are that on account of death of Sh.Chander Bhan in a motor vehicular accident, which took place on 9.11.2014 at about 7:00 p.m. in the area of Karnal bypass crossing, statedly on account of rash and negligent driving of canter bearing registration No.HR-62-2821 (hereinafter referred to as the offending vehicle) by its driver Jitender – respondent No.1, legal heirs of such deceased, namely, his wife – Smt.Vidya Devi, aged about 55 years and minor adopted son – Master Happy @ Manpreet aged 7 years had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Jitender – driver, Naresh Singh – owner and Cholamandalam MS General Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation.

On notice, all the three respondents had appeared and filed written statements contesting the claim petition.

Issues on merits were framed and the parties were afforded adequate opportunities to lead their evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as the Tribunal) allowed the claim petition partly vide award dated 19.10.2015 and a compensation of Rs.6,25,480/- with interest @ 7.5% per annum from the date of filing of the petition till realization was granted to the claimants payable by all the respondents jointly and severally. Detailed directions with regard to apportionment etc. are there in the Award.

Feeling dissatisfied with the compensation awarded by the Tribunal, the claimants have approached this Court by way of filing the present appeal seeking enhancement of the compensation awarded to them. Notice of the appeal was given to respondent – insurance company.

The insurance company has appeared through counsel.

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

The Tribunal on appreciation of evidence adduced by the parties before it, has come to the conclusion that respondent No.1 – Jitender was author of the accident by his rash and negligent driving of the offending vehicle resulting in death of Chander Bhan. The finding is proper and appropriate and does not call for any interference.It being so, the claimants being legal heirs/legal representatives of the deceased were found entitled to claim compensation from all the three respondents i.e. respondent No.1 – Jitender being driver, respondent No.2 – Naresh Singh being owner and Cholamandalam MS General Insurance Company Ltd. being insurer of the offending vehicle. Their liability was held to be joint and several.

Coming to the quantum of compensation. The Tribunal on the basis of evidence available on record had taken the age of the deceased to be 65 years, noticing that such age was mentioned in the postmortem report and age of the deceased was recorded as 60 years in the ration card dated 26.8.2005, meaning thereby, that he was aged about 68 years on the date of accident. The Tribunal was justified in taking such age of the deceased.

As regards the income of the deceased, the same was assessed to be Rs.8,580/- in light of minimum wages as per DC rates prevalent at that time. It was also taken into view that the deceased was engaged in avocation of agriculture since he is shown to be owner of agricultural land as per entries in jamabandi Ex.PH. Services rendered by him as manager of the land were considered while assessing loss to the claimants.

Learned counsel for the insurance company has submitted that at the relevant time the minimum wages payable to a skilled worker were Rs.6,289.50 in State of Haryana as per circular issued by Labour Commissioner, Haryana. But I find that the income is to be assessed considering the facts and circumstances of the case in totality and it has been found that the deceased was an agriculturist managing the agricultural land, therefore, the Tribunal was justified in taking his monthly income as Rs.8,580/- and there is no ground to reduce the same in view of circular issued by Labour Commissioner, Haryana.

Considering the fact that the age of deceased has been taken to be 65 years, in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** no ground was made out to make any addition towards future prospects and it was rightly not so done by the Tribunal.

The Tribunal considering the number of dependents upon earnings of the deceased to be two was justified in deducting 1/3rd of the amount towards personal and living expenses of the deceased in view of the guidelines provided in ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***, calculating the dependency of the claimants to be Rs.5,720/-(8,580 – 2,860) and annual dependency to be Rs.68,640/- (5,720 x 12).

The multiplier of 7 used is appropriate in view of ***Smt.Sarla Verma's*** case (supra). In that way, the compensation was rightly worked out to be Rs.4,80,480/-.

The Tribunal has further awarded a sum of Rs.20,000/- to the claimants towards expenses on last rites and transportation of the dead body etc. of the deceased, Rs.50,000/- on account of the loss of love and affection and further a sum of Rs.75,000/- to the claimant No.1/widow of deceased towards consortium, making out total compensation of Rs.6,25,480/-, more than to what the claimants were entitled. In terms of 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/-.

There is no scope for enhancement of compensation. Since the insurance company has neither filed any cross appeal nor cross-objections, I do not find it proper to reduce the amount of compensation but as far as prayer of claimants for enhancement of compensation is concerned, the same is devoid of merit.

Therefore, finding no merit in the present appeal, the same stands dismissed.

27.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No