In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 3.7.2019

FAO-5532 of 2017(O&M)

United India Insurance Company Limited

---Appellant

versus

Krishna Rani @ Krishna Devi and others

---Respondents

FAO-5648 of 2017(O&M)

Krishna Rani and another

---Appellants

versus

Jagga Singh and others

---Respondents

FAO-5887 of 2017(O&M)

Krishna Rani @ Krishna Devi and another

---Appellants

versus

Jagga Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravinder Arora and Mr. Neeraj Khanna, Advocates for the insurance company

Mr. Ashok Jindal, Advocate, for the claimants

Mr. A.K.Khunger, Advocate for driver and owner of car No. PB-05 K-1550

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Rekha Mittal, J.

This order will dispose of FAO Nos. 5532, 5648 and 5887 of 2017 as these have emerged out of the same accident dated 1.2.2013 in which Dhan Pal and Mahinder Kumar Garg @ Mohinder Kumar sustained injuries that proved fatal.

FAO No. 5532 of 2017 has been filed by the United India Insurance Company Limited whereas FAO No.5648 of 2017 has been filed by Krishna Rani and another, Lrs of Mahinder Kumar Garg @ Mohinder Kumar to assail award dated 13.9.2016 dismissing claim application and FAO No. 5887 of 2017 has been filed by Krishna Rani @ Krishna Devi and another, Lrs of deceased Dhan Pal seeking enhancement of compensation.

FAO No. 5648 of 2017

Counsel for the appellants would argue that findings of the Motor Accidents Claims Tribunal, Bathinda (in short “the Tribunal”) on issue No. 1 are the result of misreading of evidence and failure to appreciate testimony of Pritpal Singh CW1 in right earnestness. It is further argued that in DDR Ex. C-7 lodged by Vijay Bansal examined as a witness in claim preferred with regard to death of Dhan Pal, allowed by the Tribunal vide award dated 6.4.2017, subject matter of the other aforesaid two appeals, the Tribunal has accepted plea of Vijay Bansal that DDR was prepared by the police on his blank signatures and as such the facts mentioned in the DDR cannot stand in the way of claimants to seek compensation on account of accident having occurred due to rash and negligent driving of car bearing No. PB-05K-1550 by Jagga Singh respondent No. 1, owned by Jagtar Singh respondent No. 1-A therein.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal on issue No. 1 and has further submitted that the insurance company has filed FAO No. 5532 of 2017 to challenge the award with regard to death of Dhan Pal on the premise that judgment with regard to death of Mahinder Kumar Garg @ Mohinder Kumar would constitute res judicata.

I have heard counsel for the parties, perused the paper book and testimony of Pritpal Singh CW1 examined to discharge onus of issue No. 1.

Before adverting to the submissions made by counsel for the parties, it is appropriate to recapitulate briefly the facts narrated in claim application with regard to accident.

On the fateful day of 1.2.2013, Mahinder Kumar Garg @ Mohinder Kumar along with his brother Dhan Pal Garg was coming from Ferozepur to Mukatsar in car No. PB-32L-0050. When they reached on Buda Gujjar road near Gurdwara Nanak Niwas at about 5/5-30 p.m., car No. PB-05K-1550 came from opposite side which was driven by Jagga Singh in a rash and negligent manner and struck with car of Dhan Pal and Mahinder Kumar Garg @ Mohinder Kumar. As a result, Mahinder Kumar Garg @ Mohinder Kumar and Dhan Pal received multiple injuries. The police of police station Sadar Mukatsar Sahib, in connivance with respondent No. 1, took signatures of Vijay Bansal, Vikas Jain and Pritpal Singh with the understanding that FIR would be registered against respondent No. 1 but the police registered only DDR, in connivance with respondent No. 1.

The Tribunal framed issues including issue No. 1, reads thus:-

> "Whether Mahinder Kumar @ Mohinder Kumar has died in a motor vehicular accident, allegedly took place on 1.2.2013 due to rash and negligent driving of vehicle No. PB-05K-1550 by respondent No. 1? OPP"

Indisputably, the claimants examined Pritpal Singh CW1 alleged eye witness to the occurrence. Pritpal Singh tendered into evidence his duly sworn affidavit Ex. CW1/A by way of examination in chief. He reiterated the version set up in the claim application that accident took place due to rash and negligent driving of offending vehicle by respondent No. 1. A relevant extract from para 1 of his affidavit, reads as follows:-

> "That on 1.2.2013 Dhanpal Garg along with his brother Mohinder Kumar Garg @ Mahinder Kumar coming from Ferozepur to Mukatsar in Car No. PB-32-L-0050 and when

they reached on Buda Gujjar Road near Gurdwara Nanak Niwas at that time it was at about 5/5.30 p.m. the Car No. PB-05-K-1550 coming from opposite side which was being driven by respondent No. 1 in a rash and negligent manner, became out of control and struck with the above said car of Dhanpal and Mohinder Kumar. At that time Dhanpal driving the car on his extreme left side of the road. As a result of which both occupants of the car Mohinder Kumar and Dhan Pal received multiple fatal injuries on their person due to the out of the use of the motor vehicle and both persons died at the spot."

He also deposed that police of police Station Sadar Mukatsar Sahib took signatures of Vijay Bansal, Vikas Jain and the deponent on blank papers with the assurance that FIR would be registered against respondent No. 1 but they registered only DDR in connivance with respondent No. 1.

The witness was cross examined at length by counsel for respondents before the Tribunal. Counsel for the appellants read testimony of Pritpal Singh in extenso particularly the facts elicited in his cross examination. Counsel for the insurance company has failed to point out any materials on record to create slightest doubt that Pritpal Singh was not present at the spot or he has been introduced later for some extraneous reasons. Pritpal Singh has candidly denied that he is not related to the deceased or the claimants. Pritpal Singh could not be a beneficiary in case claim application is allowed. The driver of offending vehicle did not appear in the witness box to counter version of the claimants or testimony of Pritpal Singh. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. The case is to be decided on the basis of balance of probabilities. Even in the DDR purportedly lodged at the behest of Vijay Bansal, there is reference to involvement of the offending vehicle in the accident and as such possibility of offending vehicle being involved in the occurrence later is absolutely ruled out.

The Tribunal, in place of relying upon testimony of Pritpal Singh, has misled itself by taking into consideration contents of DDR, purportedly lodged at the behest of Vijay Bansal examined as a witness in the claim preferred with regard to death of Dhan Pal. Taking into consideration the materials on record, it is difficult to affirm findings of the Tribunal that claimants have failed to substantiate their plea that accident is the result of rash and negligent driving of offending car by respondent No. 1. Accordingly, findings of the Tribunal on issue No. 1 are set aside. As a natural corollary, issue No. 1 is answered in favour of the claimants and against the respondents.

There is no dispute that claimants are the widow and son of Mahinder Kumar Garg @ Mohinder Kumar, therefore, they are entitle to get compensation.

The Tribunal has assessed Rs. 6,07,000/-, detailed hereunder:-

Monthly income of the deceased	-Rs. 6000/-
Deduction for personal expenses	-1/3rd
Multiplier	-9
Loss of dependency	-Rs. 4,32,000/-
Loss of consortium to widow	-Rs. 1,00,000/-
Loss of love and affection and Security to claimant No. 2	-Rs. 50,000/-
Funeral expenses	-Rs. 25,000/-

Counsel for the claimants would argue that Mahinder Kumar Garg @ Mohinder Kumar was working as Manager in Markfed before his retirement in April 2012. After retirement, he was working on part time basis with M/s R.S.Trading Company, Grain Market, Bathinda at salary of Rs. 10,000/-. However, he has fairly conceded that the claimants did not examine a representative of M/s R.S.Trading Company to prove employment and income of the deceased. Testimony of Sachin Garg claimant No. 2 with regard to his father being an employee of M/s R.S. Trading Company does not find corroboration from an independent source much less documentary evidence. At the same time, there is nothing on record suggestive of the fact that Mahinder Kumar Garg @ Mohinder Kumar was suffering from any ailment rendering him disable to indulge in self occupation. Taking a clue from minimum wage available at the relevant time, income of the deceased assessed by the Tribunal is affirmed. As the deceased was less than 60 years of age being born on 10.4.1954 recorded in the income tax return(s), claimants shall be entitle to increase in income for future prospects @ 10%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 4,75,200/- [6000 x 12 x 9 = 6,48,000 + 64,800(10%) = 7,12,800 – 2,37,600 (1/3rd)].

Under conventional heads, compensation assessed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 5,45,200/-.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The award passed by the Tribunal is set aside. The application filed by the claimants for grant of compensation is partly allowed. The claimants are awarded Rs. 5,45,200/-, payable with interest @ 7.5% per annum from the date of petition till realization. The entire amount except Rs. 1,00,000/- shall be paid to widow of the deceased, to be invested in fixed deposit for a period of three years. The amount of Rs. 1,00,000/- shall be payable to claimant No. 2.

FAO No. 5887 of 2017 and
FAO No. 5532 of 2017

In view of aforesaid findings recorded in FAO No. 5648 of 2017, FAO No. 5532 of 2017 has been rendered infructuous and disposed of accordingly.

The claimants are in appeal seeking enhancement of compensation on account of death of Dhan Pal.

The Tribunal has awarded Rs. 7,61,000/-, detailed hereunder:-

Monthly income of the deceased	-Rs. 6000/-
Deduction for personal expenses	-1/3rd
Multiplier	-7
Loss of dependency	-Rs. 3,36,000/-
Loss of consortium to widow	-Rs. 1,00,000/-
Loss of love and affection and Security to claimants No.1 &2	-Rs. 2,00,000/- (Rs. 1 lakh each)
Funeral expenses	-Rs. 25,000/-
Loss of estate	-Rs. 1,00,000/-

Counsel for the claimants would argue that deceased was doing business under the name and style of M/s Aggarwal Electricals. The claimants produced on record income tax returns for the years 2010-11, 2011-12 and 2012-13 but the same have been discarded by the Tribunal. It is further argued that income tax returns filed by the deceased were marked as exhibits without any objection by the respondents before the Tribunal, therefore, the claimants did not feel the necessity of examining an official of the income tax department to prove the documents.

Counsel representing the insurance company would argue that compensation allowed under conventional heads may be restricted to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

The Tribunal, in para 17 of the award, has taken note of income tax returns for the aforesaid years but refused to rely upon the same by observing that record of the returns have not been proved by the claimants nor any document has been produced to prove that deceased was running the firm in the name and style of M/s Aggarwal Electricals.

Perusal of copies of income tax returns would reveal that all these returns were filed by the deceased himself. The first income tax return for the assessment year 2010-11 was filed on 27.12.2010 showing annual income to the tune of Rs. 1,41,819/-. The second return for the assessment year 2011-12 with regard to total income of Rs. 1,52,830/- was filed on 30.8.2011. The latest return for the year 2012-13 was filed online on 7.1.2013 recording gross total income to the extent of Rs. 1,74,090/-.

Counsel for the insurance company has not disputed that these income tax returns were marked as exhibits without any objection by the respondents. In the given circumstances, the reasoning adopted by the Tribunal to discard income tax returns is not valid and legal. I would hasten to add that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. On the other hand, if the Tribunal was not convinced with the income tax returns produced on record, it could either call upon the claimants to examine an official of the income tax department or suo moto summon an official of the said department to vouch for correctness and authenticity of the income tax returns. Counsel for the insurance company has not disputed correctness of the income tax returns or necessity of examining a witness form the income tax department for proving these documents.

Taking into consideration income shown in the income tax returns, annual income of the deceased is assessed at Rs. 1,74,000/-. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs. 8,12,000/- [1,74,000 x 7= 12,18,000- 4,06,000 (1/3rd)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium to widow	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 8,82,000/- and the additional amount is Rs. 1,21,000/-(8,82,000-7,61,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased, to be invested in fixed deposit for a period of two years.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

3.7.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No