IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM-16947-CII-2019 in
FAO-4244-2018 (O&M)

Date of decision: 27.08.2019

Smt. Neelam and others

..... Appellants

Versus

Oriental Insurance Company and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Ashish Gupta, Advocate for the applicant-appellants.

Ms. Vandana Malhotra, Advocate
for respondent No. 1-Insurance Company.

RAMENDRA JAIN, J. (ORAL)

CM-16947-CII-2019

Through this application under Section 151 CPC, prayer has been made for fixing some actual and early date of hearing in the main appeal.

Heard.

For the reasons explained in the application which is supported by an affidavit, the same is allowed and main appeal is taken up for hearing today itself.

FAO-4244-2018 (O&M)

Through this appeal, the claimants have claimed enhancement of compensation by modifying the impugned Award dated 28.02.2018 of the Motor Accident Claims Tribunal, Sonepat (for short-'the Tribunal'), partly accepting their claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as-'the Act').

Briefly, Krishan, husband of appellant No. 1, father of appellant No. 2 and son of appellants No. 3 and 4 in the day time of 11.09.2015, met with an accident, caused by respondent No. 2-Naushad Ali, while driving trailer bearing registration No. HR-55-Q-5978 and received multiple grievous injuries and succumbed to the same on 16.10.2015 in Fortis Hospital, Delhi.

Being aggrieved, the appellant-claimants filed a claim petition under Section 166 of the Act. The learned Tribunal after holding trial, partly accepted the claim petition, thereby awarded compensation of ₹47,58,050 along with interest @ 7% per annum from the date of filing of claim petition till realization, to the appellant-claimants.

Learned counsel for the appellants *inter alia* contends that the Tribunal has illegally discarded income tax return of deceased-Krishan (Ex. P-8) for the assessment year 2015-16, showing annual income of the deceased at ₹3,68,300/-, on the plea that the same was filed after the death of deceased-Krishan and, thus, was not a genuine document. The said observation of learned Tribunal is patently illegal, in view of statement of PW-5 Sanjeev Kumar, Tax Assistant Income Tax Department, Sonepat, who categorically testified that the said return was filed on 10.08.2015 i.e. much prior to the date of accident and death of deceased-Krishan.

On the other hand, learned counsel for respondent No. 1-Insurance Company, has not been able to refute the above contention of learned counsel for the appellants, rather did not dispute that the instant appeal has to be decided in accordance with the principles laid down in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009.**

As per calculations (Mark A) furnished by learned counsel for the claimant-appellants which is taken on record, the total amount of compensation payable to claimant-appellants, according to **Pranay Sethi's case (supra)**, comes to ₹67,09,108/- less ₹47,58,050/-, already awarded by the learned Tribunal. Meaning thereby, the claimant-appellants are entitled to ₹19,51,058/- over and above the compensation awarded by the learned Tribunal.

Learned counsel for respondent No. 3-Insurance Company has not been able to controvert or point out any infirmity in the above calculations (Mark-A). Hence, the same is accepted.

In view of the above, the claimant-appellants are held entitled to compensation of ₹19,51,058/- over and above the amount of ₹47,58,050/- already awarded by the learned Tribunal, vide Award impugned herein. Respondent No. 1-Insurance Company, through its counsel is directed to deposit the aforesaid enhanced amount of compensation before the learned Tribunal within six weeks from today, along with up-to-date interest @ 7.5% per annum from the date of filing of claim petition till realization, for onward disbursement to the claimant-appellants, in proportion so arrived at by it, in accordance with law against proper receipt and identification.

In case aforesaid enhanced amount is not deposited within stipulated time, Insurance Company would be liable to pay the same with interest @15% from the date of institution of claim petition till realization.

Disposed of .

August 27, 2019 **(RAMENDRA JAIN)**
rishu **JUDGE**

Whether speaking/reasoned **Yes/No**
Whether reportable **Yes/No**