IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 7174 of 2017 (O&M)
Date of decision : 13.2.2019
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Tina minor through her mother
Smt. Parmila
................Appellant

vs.

Naresh and others
.................Respondents

2) FAO No. 514 of 2018 (O&M)
...

Smt. Parmila and others
................Appellants

vs.

Naresh and others
.................Respondents

3) FAO No. 5425 of 2017 (O&M)
...

Sri Ram General Insurance Company
................Appellant

vs.

Smt. Parmila and others
.................Respondents

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

Present: Mr. Ajay Shekhawat, Advocate for the appellants.
(for respondents in FAO Nos. 7174-2017 & 514-2018))

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate for respondent No.3
-Insurance company (for appellant in FAO No.5425-2017))

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H. S. Madaan, J. (Oral)

By this common judgment, I intend to dispose of three appeals i.e. bearing FAO No. 7174 of 2017 titled as 'Tina minor through her mother Smt. Parmila vs. Naresh and others', FAO No. 514 of 2018 titled as 'Smt. Parmila and others vs. Naresh and others' and FAO No. 5425 of 2017 titled as 'Sri Ram General Insurance Company vs. Smt. Parmila and others', as all the three appeals have arisen out of the same award.

Briefly stated, facts of the case are that on 18.10.2016, deceased Ashok, alongwith his minor daughter Tina, was going to village Hindol from Kalanaur, on his motorcycle, make Hero HF Deluxe. The motorcycle was being driven by Ashok, on which Tina was pillion riding. Radhey Sham s/o Sadhu Ram a brother of Ashok Kumar was following that motorcycle on his separate motorcycle. While both the motorcycles had gone a little ahead of village Kherari, near Fauji Hotel, then a truck bearing registration No. HR-63-B-2767, being driven by Naresh - respondent No.1, in a rash and negligent manner, at a high speed, came from the opposite direction and while going on the wrong side, hit motorcycle of Ashok, as a result of which, both riders, namely Ashok and Tina fell down and sustained multiple and grievous injuries. Both injured were attended to by Radhey Shyam. However, Ashok succumbed to the injuries received by him in the mishap. Tina - injured was taken to Post Graduate Institute of Medical Science, Rohtak and got admitted there. Formal FIR regarding the accident was registered, on the basis of statement of Radhey Shyam. Smt. Parmila - widow, Tina - minor daughter, Manish - minor son, Om Pati - mother and Sadhu Ram - father of Ashok, deceased, had brought a claim petition under Section 166 of the Motor Accident Claims Tribunal, Rohtak, claiming compensation to the tune of Rs.50 lacs, in which they impleaded Naresh – driver, Rampal Goyat – owner and Shri Ram General Insurance Co. Ltd., - insurer of truck bearing registration No. HR 63-B-2767, as respondents. Another claim petition was filed on behalf of Tina minor, who had received injuries in the accident, against those very respondents.

As per case of the claimants, deceased Ashok was aged about 30 years and was working as a cook, besides engaged in dairy farming and used to earn Rs.25,000/- per month from those avocations. He was the only earning member in the family and all the petitioner-claimants were dependent upon his earnings. With regard to minor - Tina, it has been contended that she is aged about 8-9 years.

Both the claim petitions were tried together.

Notice of both the claim petitions was given to the respondents, who put in appearance. Respondents No. 1 and 2 filed a joint written statement, coming up with a plea that the accident in question had taken place on account of faulty driving of Ashok - deceased and respondent No.1 being driver, and truck No. HR-63-B-2767 have been wrongly involved in this case as well as the criminal case. Respondent No.2 has also been wrongly roped in. As a matter of fact, no accident was caused by respondent No.1, due to rash and negligent driving of the said truck. However, respondent No.1 was having a valid and effective driving licence and the truck was insured with respondent No.3 – Insurance company. Both those respondents prayed for dismissal of the claim petition.

Respondent No.3 – Insurance company by separate written statements filed in two cases, took up the plea that the accident in question had taken place due to rash and negligent driving of motorcycle by Ashok – deceased; that respondent No.1 Naresh was not having a valid driving licence at the time of accident.

On merits, material assertions in the claim petition were denied, while reiterating the assertions in the preliminary objections, finally coming up with a prayer for dismissal of the claim petitions. No rejoinder was filed.

From the pleadings of the parties, following issues were framed in claim petitions:-

1. Whether the accident in question took place due to the rash and negligent driving of vehicle bearing registration No. HR-63-B-2767 by respondent No.1 ? OPP
2. If issue No.1 is proved in affirmative, to what amount of compensation, the petitioners of petition No.4 of 2017 are

entitled to and from whom? OPP

3. If issue No.1 is proved, to what amount of compensation, the petitioner of petition No.5 of 2017 is entitled to and from whom? OPP
4. Whether there are willful violation of the terms and conditions of the insurance policy, if so to what effect? OPR-3
5. Relief.

Parties led evidence in support of their respective claims. After hearing the arguments, the trial Court gave issue wise findings. Issue No.1 was decided in favour of the petitioner-claimants. Issues No. 2 and 3 were decided in favour of the petitioners-claimants. Issue No.4 was decided against respondent No.3 – Insurance company.

Resultantly, both the claim petitions were accepted vide award dated 26.5.2017. In the claim petition titled Parmila etc. vs. Naresh etc. (MACT No.4/2017) compensation of Rs.19,85,600/- was awarded with interest @ 7.5% per annum, alongwith costs, finding all the respondents to be liable jointly and severally, with the observation that respondent No.3 Insurance company would be liable to indemnify the insured. The apportionment of the compensation amount among the claimants and other terms and conditions were mentioned in detail in the award.

With respect to other claim petition filed by Tina vs. Naresh etc. (MACT No.5/2017), a compensation of Rs.83,750/- alongwith interest @ 7.5% per annum with costs, was awarded to the petitioner-claimant.

The petitioners-claimants in both the claim petitions, as well as the Insurance company, were dissatisfied with the award and they have filed separate appeals, notice of which was given to the respondents therein, who put in appearance.

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

As far as, the appeal filed by the Insurance company is concerned, the main contention of the learned counsel for the appellant – Insurance company was that the Tribunal has taken the income of the deceased to be Rs.10,200/- per month without there being any sufficient evidence to do so, resulting in grant of inflated compensation. The income so assessed is on higher side, as such it should be reduced and the compensation be reduced.

Whereas learned counsel for the respondent-claimants has contended that the claimants have led enough evidence, both oral as well as documentary, to prove such income of the deceased. The Tribunal was justified in taking that amount as income of the deceased.

After hearing rival contentions of learned counsel for the parties, I find that the Tribunal did not commit any error in taking monthly income of the deceased Ashok to be Rs.10,200/- and it has given proper reasoning for doing so. Claimant – Parmila, while getting her statement recorded as PW-1 had stated that her husband Ashok used to work as a cook at Juneja Hotel, in addition to doing work of milk vendor, in that way he used to earn Rs. 2,500/- P.M. PW-3 Gulshan - owner of the hotel had also deposed that deceased Ashok was working as a cook in his hotel and he would pay Rs.15,000/- per month to Ashok. The Tribunal was extra vigilant not to accept the figure of Rs.15,000/- per month as salary statedly being paid to Ashok by owner of Juneja Hotel, Kalanaur, for the reason that as stated by PW-3 Gulshan Kumar, in his cross examination, he was not maintaining any account showing payment of that amount to Ashok and was not an income tax assessee. In that way, the Tribunal took into consideration the minimum wages prevalent in Rohtak, on the date of accident, which were Rs.10,200/- as monthly income of the deceased. No fault could be found with such approach of the Tribunal. Therefore, argument of learned counsel for the appellant in that regard is rejected.

The tribunal had not granted any amount towards future prospects. In terms of authority ***National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,*** addition of 40% is required to be made since the deceased was aged below 40 years. Doing that his total monthly income comes to Rs. 14,280/- (Rs.10,200 + 4080).

The Tribunal was justified in making deduction of 1/4th amount towards personal expenses of the deceased, keeping in view the fact that number of claimants -dependents happened to be 5. Therefore, in that way the monthly dependency of the claimants comes out to Rs.10,710/- (Rs.14,280 – 3,570). The annual dependency of the claimants is worked out to Rs. 1,28,520 (Rs.10,710 X 12).

The Tribunal has used multiplier of 17 in terms of the ratio of authority ***Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77,*** which has been so done correctly. Therefore, the payable compensation comes out to Rs.21,84,840/- (Rs. 1,28,520 X 17). On this amount, in terms of ratio of authority ***Pranay Sethi's case (Supra),*** the appellants – 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.22,54,840/- (Rs. 21,84,840 + 70,000). The Tribunal seems to have granted higher amount under the conventional Heads, which is modified accordingly, as detailed above.

In that way, the claimants are entitled to get additional compensation of Rs. 2,69,240/- (Rs.22,54,840 – 19,85,600). The claimant-appellants shall be entitled to get interest @ 7.5% per annum on the additional compensation from the date of filing of appeal till actual realization. The apportionment and other terms and conditions shall remain the same as in the original award.

Now coming to the claim petition with regard to minor Tina, who had suffered fracture in her right tibia, for which K-wire fixation was done, she was granted Rs.83,750/-. Keeping in view 10% permanent disability suffered by her, compensation of Rs.20,000/-

had been granted.

Learned counsel for the appellant-claimant Tina has referred to authority ***Mallikarjun vs. Divisional Manager, National Insurance Co. Ltd. and another 2013 ACJ 2445***, which was a case where a child had suffered disability, on account of receiving injuries in a motor vehicular accident. The injuries included fracture of tibia in right leg. The Apex Court had observed that appropriate compensation on all other Heads in addition to actual expenditure for treatment, attendant etc., should be if the disability is above 10% and upto 30 % to the whole body, Rs.3,00,000/-. However, since in the present case, 10% of permanent disability was there and there is nothing on record to show that it was with regard to the entire body, therefore, the amount of compensation awarded as Rs.20,000/-, does not call for any interference.

Keeping in view the nature of injuries suffered by her and surgery performed for joining of fracture, the Tribunal has awarded a sum of Rs.15,000/- towards pain and suffering. I find that a girl of young age, having suffered injuries in the road accident must have faced grave discomfort, inconvenience, pain and suffering and amount of Rs.15,000/- awarded is on the lower side. That amount is enhanced to Rs.25,000/-.

The Tribunal has awarded a sum of Rs.20,000/- towards services of attendant and special diet, by clubbing of two compensations under two Heads. That should have been awarded separately. A young girl suffering injuries having fracture in her right leg would definitely have required services of attendant to look after and serve her during the period of hospitalization and thereafter even. Thus amount of Rs.20,000/- is awarded on account of services of attendant and for special diet another sum of Rs.20,000/- is awarded.

The Tribunal has adopted a hyper technical approach in granting amount of Rs.3,732/- towards expenditure incurred on medicines etc. keeping in view the bills produced for that amount. However, as a matter of common knowledge it is not possible to retain each and every bill or invoice for the medicines purchased. The Tribunal has not granted any compensation towards future medical expenses also. Therefore, that amount of Rs.3,732/- is enhanced to Rs.10,000/-. On account of loss of amenities and considering that due to scar and locomotive disability, she would face problems in her matrimonial alliance, amount of Rs. 25,000/- has been awarded. Though it is difficult to assess compensation to be paid under that Head, but I find that it would be much more than awarded by the Tribunal. The same is enhanced to Rs.50,000/-. Thus the compensation payable works out to Rs. 1,45,000/- (Rs.20,000 + 25,000 + 20,000 + 20,000 + 10,000 + 50,000) and additional compensation works out to Rs. 61,250/- (Rs.1,45,000 – 83,750) with interest @ 7.5% per annum from the date of filing of appeal till the date of actual realization. The apportionment and other terms and conditions shall remain the same as in the original award.

Thus the appeals filed by the claimants-appellants i.e. FAO No. 7174 of 2017 and FAO No. 514 of 2018, are accepted with costs, whereas the appeal filed by the Insurance company bearing FAO No. 5425 of 2017 (O&M), is disposed of accordingly.

(H.S. Madaan)
13.2.2019 **Judge**
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No