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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.6109 of 2012 with
XOBJC No.8-CII of 2015
Date of Decision: 08.02.2019

National Insurance Company Ltd.

Appellants

Versus

Gurmit Kaur and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Kapoor, Advocate
for the appellants.

Mr. R.P.S. Ahluwalia, Advocate
for respondents No.1 to 3.

Ms. Gurdeep Kaur, Advocate
for respondents No.4 and 5.

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AVNEESH JHINGAN, J (Oral):

The award dated 11.08.2012 passed by the Motor Accident Claims Tribunal, S.A.S. Nagar Mohali [for brevity 'the Tribunal'] has been challenged by the insurer of the vehicle bearing registration No. PB-11AA-8201 [hereinafter referred to as 'offending vehicle'] whereas the claimants have filed cross objections to the appeal seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'].

The claimants are respondents No.1 to 3 and occupant and owner-cum-driver of the offending vehicle are respondents No.4 and 5 in the appeal.

The facts emanating from the record are that on 30.01.2008, Joginder Singh alongwith his mother Gurbachan Kaur was travelling in Maruti Car bearing registration No. PB-11K-4131. On their way, there was a head-on collision of their car with the offending vehicle. As a result of the impact, both the occupants sustained grievous injuries and lost their lives. FIR No.9, dated 31.01.2008 was registered against Joginder Singh on the statement made by Rajinder Singh who was alleged to be the occupant in the offending vehicle.

A claim petition was filed under Section 166 of the Act. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the contributory negligence of both the vehicles. The owner-cum-driver and insurer of offending vehicle were held jointly and severally liable to pay 50% amount of the compensation awarded.

In the claim petition, it was pleaded that the deceased was 56 years old at the time of accident. He was an agriculturist owing 1/5th of 112 kanals of land i.e. about 3 acres of land and he was also doing dairy farming. The Tribunal assessed monthly contribution of ₹4,500/- from agricultural income and ₹2,000/- from dairy farming; 1/4th deduction for self-expenses was made and multiplier of '9' was applied. A sum of ₹30,000/- was awarded under the conventional heads. The Tribunal held that the claimants are entitled to ₹2,93,250/- (i.e. 50% of the total compensation) considering the fact that 50% contributory negligence was attributed to Joginder Singh.

Heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the insurer contends that the Tribunal erred in holding that there was 50% negligence of the offending vehicle as the FIR was registered against Joginder Singh and no evidence was adduced to prove the rash and negligent driving of the offending vehicle. He further contends that there was no reliable proof with regard to the monthly income of the deceased from dairy farming. His grievance is that 1/4th deduction for self-expenses has wrongly been made instead of 1/3rd.

Learned counsel for the claimants argues that no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side. He defends the award and states that the pass book issued by Milkfed with regard to supply of milk by Joginder Singh is placed on record. He further argues that brake-marks are evident in the photographs and the eye-witness Rajinder Singh, on whose statement FIR was registered, never deposed before the Tribunal to support the statement made by the driver-cum-owner of the offending vehicle.

There is no dispute that the FIR was lodged against Joginder Singh on the statement of Rajinder Singh. It has been argued that the Cancellation Report filed by the Police was accepted by the *illaqa* Magistrate.

The contention of learned counsel for the insurer that it is not the case of 50-50 contributory negligence, but it is the case where the accident took place due to negligence of Joginder Singh, lacks merit. The onus to prove the involvement of the offending vehicle and rash & negligent driving of the offending vehicle under Section 166 of the Act is not as strict as in criminal proceedings. It is to be decided on principles of preponderance of probabilities. The Supreme Court in ***Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504*** held as under:

> *"The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in* ***Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]*** *are very pertinent.*
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> > *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."*

The reliance on the Cancellation Report and the fact that FIR was lodged against Joginder Singh will not enhance the case of the insurer. Both the occupants of the car lost their lives in the accident and only two people survived i.e. driver-cum-owner and occupant of the offending vehicle. It is the occupant of the offending vehicle who registered the FIR and obviously against Joginder Singh. Balwinder Singh i.e. owner-cum-driver of the offending vehicle deposed before the Tribunal and stated that he was driving on the left side in a moderate speed but the eye-witness Rajinder Singh never stepped into the witness box to support the statement of Balwinder Singh. He avoided cross-examination by doing so. It is not so that the onus is being shifted from the claimants to the owner-cum-driver with regard to the rash and negligent driving. The Cancellation Report itself shows that even in the criminal case, no trial was done as the person against whom FIR was registered is deceased.

Though the photographs placed on record cannot be a conclusive evidence but still from the naked eyes it can be viewed that there are brake marks of the offending vehicle, which shows that the offending vehicle was being driven at a high speed. In such circumstances no fault can be found in the findings recorded by the Tribunal that there was contributory negligence in the ratio of 50:50.

As regard quantum of compensation, the claimants pleaded that the deceased was an agriculturist and was running a dairy farm, albeit, they failed to substantiate monthly earning of the deceased. The Tribunal considering the agricultural land owned by the deceased held that there was contribution of ₹4,500/- towards agricultural income.

Learned counsel for the insurer disputed that another amount of ₹2,000/- has been considered as the monthly income of the deceased from dairy farming. The objection raised is that no one was examined from Milkfed to prove the fact that he was supplying milk to Milkfed and how much payment was being made to the deceased by Milkfed. From the perusal of the record, there are pass-books issued by Milkfed which have been placed on record. Nobody was examined to prove the authenticity of the said pass books but from the perusal of the pass books it appears that there are day-to-day entries with regard to quantity of milk supplied and percentage of fat in the milk. This may not be enough to prove monthly earning of the deceased from supply of milk but it is *prima-facie* evident that he was doing dairy farming, as such no interference is called for in the assessment of monthly income of the deceased.

Having due regard to the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480,*** 10% future prospects are awarded as the deceased was 56 years old at the time of accident and falls within the category of self-employed or a person having an established income. The claimants are also entitled to ₹15,000/- each for funeral expenses and for loss of estate. ₹40,000/- are awarded to the widow for loss of consortium.

The deceased was survived by widow and two daughters. As per decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21***, 1/3rd deduction for self-expenses is to be made instead of 1/4th.

There is no challenge to multiplier applied of '9'.

As there was contributory negligence, the Tribunal while making 50% deduction on account of contributory negligence, made ½ deduction from the annual dependency and awarded compensation under the conventional heads exclusively.

In view of above discussion, compensation is re-calculated as under:-

Particulars	**Amount (in ₹)**
Monthly income of the deceased as assessed	6,500/-
10% Future Prospects	(+) 650/-
Sub Total	7,150/-
1/3rd deduction for self expenses	(-) 2,383/-
Monthly Dependency	4,767/-
Annual Dependency	57,204/-
Applying multiplier of '9'	5,14,836/-
½ Deduction for 50:50 contributory negligence	(-) 2,57,418/-
Dependency after deducting contributory negligence	**2,57,418/-**
Funeral Expenses	**15,000/-**
Loss of Estate	**15,000/-**
Loss of consortium to widow	**40,000/-**
Grand Total	**3,27,418/-**

The award dated 11.08.2012 is modified to the extent that amount of ₹2,93,250/- is enhanced to ₹3,27,418/-, consequent upon making ½ deduction from the annual dependency on account of contributory negligence.

The claimants shall be entitled to enhanced amount alongwith interest @ 7.5% per annum from the date of filing the claim petition till the realization of the amount.

The appeal and cross objection are disposed of accordingly.

[AVNEESH JHINGAN]
JUDGE

February 08, 2019
pankaj baweja

1. Whether speaking/ reasoned : **Yes**/ No
2. Whether reportable : **Yes**/ No