IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

-.-

Date of decision: 09.04.2019

FAO 4501 of 2016 (O&M)

New India Assurance Company Limited ....*Appellant*

Versus

Rashmi Devi and others ....*Respondent*s

FAO 4723 of 2016 (O&M)

New India Assurance Company Limited ....*Appellant*

Versus

Rashmi Devi and others ....*Respondent*s

FAO 7519 of 2016 (O&M)

Rajasthan State Road Transport Corporation ....*Appellant*

Versus

Rashmi Devi and others ....*Respondent*s

FAO 7520 of 2016 (O&M)

Rajasthan State Road Transport Corporation ....*Appellant*

Versus

Rashmi Devi and others ....*Respondent*s

FAO 1622 of 2017 (O&M)

Divya Kumari ....*Appellant*

Versus

Naresh Kumar and others ....*Respondent*s

FAO 1623 of 2017 (O&M)

Rashmi Devi and another ....*Appellants*

Versus

Naresh Kumar and others ....*Respondent*s

FAO 1624 of 2017 (O&M)

Rashmi Devi ....*Appellant*

Versus

Naresh Kumar and others ....*Respondents*

FAO 1625 of 2017 (O&M)

Rashmi Devi ....*Appellant*

Versus

Naresh Kumar and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Vinod Gupta,Advocate
for the insurance company

Mr. Anil Kumar Gahlawat, Advocate
for Rajasthan State Road Transport Corporation

Ms Sumanjit Kaur, Advocate
for the claimants.

-.-

Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 13.05.2016 passed by the Motor Accidents Claims Tribunal, Narnaul (in short, the Tribunal) whereby compensation has been assessed on account of death of Ramesh Kumar, Naveen Sachdeva and injuries sustained by Smt. Rashmi Devi and Divya Kumari in a motor vehicular accident that took place on 12.07.2012.

FAO Nos. 4501 and 4723 of 2016 have been filed by the insurance Company; FAO Nos. 7519 and 7520 of 2016 have been filed by Rajasthan State Road Transport Corporation whereas remaining four appeals have been preferred by the claimants seeking enhancement of compensation.

FAO No. 4501, 4723, 7519 and 7520 of 2016

Counsel for the insurance company would argue that the appeals have been preferred to assail findings of the Tribunal imposing entire liability to pay compensation upon the driver, owner and insurer of Car bearing temporary No. HR 99 LJ 9912, registration No. HR 36S 3736 despite findings of the Tribunal on issue No. 1 that the accident is the result of rash and negligent driving of driver of Car aforesaid and Bus No. RJ-32 PA-08227 of Rajasthan Roadways. It is argued that in view of findings of the Tribunal on issue No. 1, liability to pay compensation may be apportioned accordingly. The second submission made by counsel is that the appeals have been preferred to assail quantum of compensation assessed qua death of Ramesh Kumar and Naveen Sachdeva.

Counsel representing the respondent - Rajasthan Roadways, on the contrary, has supported findings of the Tribunal fastening liability upon the driver, owner and insurer of offending car in which the deceased and injured were travelling at the time of unfortunate occurrence.

The plea of the insurance company with regard to quantum of compensation would be considered by the Court while deciding appeals filed by the claimants seeking enhancement of compensation in regard to death of Ramesh Kumar and Naveen Sachdeva.

The Tribunal in concluding lines of para 13 of the award pertaining to issue No. 1 "*whether Ramesh Kumar son of Loknath Sachdeva and Naveen died and Divya Kumari, Rashmi Devi sustained injuries in a road accident which took place on 12.07.2012 at about 7 pm in the area of Chandbaji Talamod, District Jaipur due to rash and negligent driving of Bus bearing registration No. RJ 32 PA 0827?*" has held, quoted thus:-

> *"that the petitioners have successfully proved*

> *that deceased Ramesh and Naveen Sachdeva succumbed to the injuries suffered by them and Rashmi Devi and Divya sustained injuries in motor vehicular accident which took place, because of rash and negligent driving of respondent No. 1 and 4, being driver of the offending car and bus. Accordingly, this issue is hereby returned in favour of petitioners and against the respondents."*

Counsel for the claimants have produced copies of testimonies of injured Divya and Rashmi Devi for perusal and appreciation. Both the injured witnesses have consistently deposed that the accident took place when driver of the aforesaid Bus, going ahead of the ill fated car, suddenly applied brakes and driver of the car aforesaid struck against bus from behind. Divya Kumari was subject to cross examination and nothing tangible and material has been elicited that accident occurred due to sole negligence of driver of either of the vehicles involved in the occurrence.

Indisputably, drivers of both the vehicles did not appear in the witness box to explain as to how the accident took place much less to state on oath that they were not negligent in causing the accident. The driver of bus did not examine himself to explain as to why he suddenly applied brakes while driving his bus on a national highway. Similarly, driver of the car did not appear in the witness box to say if he was maintaining a safe distance from the bus and what precaution was taken by him to avoid collision when bus driver allegedly applied sudden brakes. In the given circumstances, the Tribunal has rightly held that the accident is the result of rash and negligent driving of both the vehicles involved in the occurrence.

Accordingly, negligence to the extent of 50% each is liable to be attributable to both the vehicles. Resultantly, the driver, owner and insurer of offending car and driver and owner of offending bus would be liable to pay compensation to the extent of 50% each. In this view of the matter, findings of the Tribunal with regard to payment of compensation are modified accordingly.

For the foregoing reasons, the appeals preferred by the insurance company are partly allowed in the aforesaid terms. On the contrary, the appeals preferred by Rajasthan State Road Corporation are ordered to be dismissed.

FAO No. 1622 of 2017

With regard to alleged injuries sustained by appellant Divya Kumari, the Tribunal has not awarded any compensation with findings that medico legal report etc. of Divya Kumari has not been produced on record.

Counsel for the claimant would argue that medico legal report of Divya Kumari is Ex P30. A copy of MLR has been produced for perusal and appreciation of the Court wherein the claimant is shown to have stitched wound 7 x ½ cm on forehead. However, the claimant did not produce any document with regard to medical treatment.

Taking into consideration the MLR, the claimant is awarded a lump sum amount of Rs.2,000/- for pain and suffering and expenses of medical treatment, payable with interest at the rate of 7.5% per annum from the date of petition till realization.

In view of the above, the appeal is partly allowed in the aforesaid terms.

FAO No. 1623 of 2017

The Tribunal has awarded Rs.15,40,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.10,000
-Deduction for personal expenses	1/3rd
-Multiplier	13
-Addition in income @ 40%	Rs.4,44,000/-
-Loss of consortium	Rs.50,000/-
-Funeral expense	Rs.20,000/-

Counsel for the claimants would argue that the claimants examined official from the income tax department to prove income tax returns of the deceased for the years 2009-10, 2010-11 and 2011-12. It is further argued that the deceased was running the business of sale of tubewell borewells. In income tax return for the assessment year 2009-10, income of the deceased is shown approximately Rs.15,00,000/- and in latest income tax return, income is more than Rs.10,84,000/- per annum but the Tribunal has wrongly ignored income tax returns while assessing income of the deceased at Rs.10,000/- per month. Taking into consideration income of the deceased in latest income tax return, annual income of the deceased is assessed at Rs.8,99,424/- per annum after deducting income tax *i.e.* Rs.1,84,576/-.

The deceased was born on 05.04.1961 as recorded in income tax returns. On the date of occurrence i.e. 12.07.2012, he was more than 51 years of age. The claimants shall be entitle to addition in income for future prospects at the rate of 10%. Deduction for personal expenses applied by the Tribunal is correct and affirmed. However, admissible multiplier for computing loss of dependency would be 11.

In view of the above, loss of dependency is calculated at Rs.72,55,354.00 (Rs.1,03,40,000/- i.e. 8,99,424 x 11 + Rs.9,89,366.00 (10% addition) – Rs.36,27,677.00 (1/3rd deduction)).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

Total compensation is Rs.73,25,354.00 and additional amount is Rs.57,85,354/- payable with interest @ 7.5% per annum from the date of petition till realization, to be shared by the claimants in equal ratio and the same shall be invested in fixed deposit for a period of three years.

In view of the above, the appeal is partly allowed in the aforesaid terms.

FAO No. 1624 of 2017

The Tribunal has awarded Rs.13,07,464/- with regard to death of Naveen Sachdeva, detailed hereunder:-

-Monthly income of the deceased	Rs.9,000/-
-Deduction for personal expenses	50%
-Multiplier	18
-Loss of dependency	Rs.9,72,000/-
-Loss of love and affection	Rs.1,00,000/-
-Last rites expense	Rs.20,000/-
-Medical expenses	Rs.2,15,464/-

Counsel for the claimant (mother of deceased) would argue that the deceased was Chartered Accountant and his income is liable to be assessed accordingly. It is further argued that the claimant has placed on record documents Ex.P25 to P28 in respect of deceased having passed Chartered Accountants examination in May 2011. Another submission made by counsel is that the claimant is entitle to addition in income for future prospects.

Counsel representing the insurance company has supported assessment made by the Tribunal except compensation allowed under conventional heads.

Perusal of document Ex.P25, copy whereof has been supplied during course of hearing would reveal that Institute of Chartered Accountants of India certified that Naveen Sachdeva has passed professional competence examination held by the institute in the month of May 2011.

Taking into consideration educational qualification of the deceased, his income is assessed at Rs.20,000/- per month. The claimant shall be entitle to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency is calculated at Rs.30,24,000/- (Rs.43,20,000/- *i.e.* 20,000 x 12 x 18 + Rs.17,28,000 (40% addition) – Rs.30,24,000/- (50% deduction)

A sum of Rs.2,15,464/- towards medical expenses allowed by the Tribunal is affirmed. However, compensation under conventional heads allowed by the Tribunal is modified to the effect that the claimant shall be entitle to Rs.30,000.00 (Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court, referred to above.

Total compensation is Rs.32,69,464/- and additional amount is Rs.19,62,000/- (32,69,464 - 13,07,464) payable with interest at the rate of 7.5% per annum from the date of petition till realization, to be invested in fixed deposit for a period of three years.

In view of the above, the appeal is partly allowed in the aforesaid terms.

FAO No. 1625 of 2017

The Tribunal has dismissed the claim primarily on the ground that no document has been produced on record with regard to injuries sustained by Rashmi Devi. However, counsel for the claimant has produced document Ex P29, a copy of medico legal report for perusal and appreciation. Taking into consideration the nature of injuries sustained by Rashmi Devi, she is awarded a sum of Rs.5,000/- for pain and suffering and medical expenses etc. payable with interest at the rate of 7.5% per annum from the date of petition till realization.

In view of the above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

09.04.2019
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No