IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 7613 of 2015 (O&M)
and Cross Obj. No. 289-CII-2016
Date of decision : 10.7.2019

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Krishna Devi

................Appellant

vs.

Sandeep Singh and others

.................Respondents

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

Present: Mr. D.K. Gupta, Advocate for the appellant.

Mr. Raman Sharma, Advocate, amicus curiae

Mr. Ashwani Talwar, Advocate for respondent-Insurance company.

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H. S. Madaan, J. (Oral)

CM 24017-CII of 2015

This is an application for condonation of delay of 31 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application the delay in re-filing the appeal is condoned.

The application is allowed.

CM 24018-CII of 2015

This is an application for condonation of delay of 41 days in filing the appeal.

Heard.

For the reasons mentioned in the application the delay in -filing the appeal is condoned.

The application is allowed.

<u>Main case.</u>

On account of death of Mohit Mahajan s/o late Sh. Brij Mohan Mahajan, in a motor vehicular accident, which took place on 7.10.2011, allegedly on account of rash and negligent driving of Tata Indigo car bearing registration No. PB-02-BG-9815, by respondent No.1 Sandeep Singh, Smt. Krishna Devi, mother of the deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Sandeep Singh – driver, M/s Jujhar Constructions and Travels Private Limited, Amritsar – owner and United India Insurance Company Limited, Ludhiana – Insurer of Tata Indigo car in question.

After contest, the claim petition was accepted by Motor Accidents Claims Tribunal, Pathankot and a compensation of Rs.51,41,180/- was awarded to the claimant with interest @ 9% per annum alongwith costs, payable by all the three respondents jointly and severally.

While determining the compensation, the Tribunal had accepted the version of the claimant that deceased was serving as Relationship Officer with First Gulf Wealth of First Gulf Bank , Dubai, earning Rs.7000 Dirhams per month, relying upon salary certificate Exhibit A-8, showing that the deceased was receiving salary of Rs.7000 Dirhams without specifying whether he was getting that amount per month or for a longer period.

The claimant was dissatisfied with the compensation amount awarded by the Tribunal and has approached this Court by way of filing an appeal, notice of which was given to the respondents.

Respondent No.3 Insurance company was also aggrieved with the amount of compensation awarded to the claimant by the Tribunal, being of the view that it was on much higher side. Therefore, the respondent – Insurance company has brought cross objections, notice of which was given to the claimant.

When the matter came up for hearing before a Co-ordinate Bench, vide order dated 26.12.2016, it was observed that following questions arise in this case:-

i) Whether evidence is available on record to show that original salary certificate/slip (Ex.A-8) was produced before the tribunal and whether same is 'per se' admissible document?

ii) Whether there is any evidence to show that salary (7000 Dirhams) per month as mentioned in Ex.A-8 was actually being withdrawn by the deceased, whether any corresponding bank statement or other document has been produced to corroborate the salary?

iii) Whether salary certificate from a foreign country can be taken into consideration despite the fact that same was merely tendered and not proved by adopting the due procedure of evidence?

iv) Whether any bank statement or other evidence is available on record to show that out of 7000 Dirhams stated to be earned by the deceased, part thereof was being transmitted to India to his family?

v) Whether value of Dirhams, stated to be earned by the deceased in terms of Indian currency, was calculated by adopting some method; whether any evidence in this regard is on record?

and the case was fixed for further hearing.

Today counsel for the parties have submitted that in view of the questions framed by this Court in order dated 26.12.2016, there may be necessity of leading further evidence and for that purpose, the matter be remanded to the Tribunal.

Learned counsel appearing for the Insurance company has stated that the amount of compensation awarded by the Tribunal has since been deposited by the Insurance company with the Tribunal and on furnishing of requisite surety, the amount has been released to the claimant. He submitted that he has no objection if such situation is allowed to prevail till the fresh decision is given by the Tribunal, after remand.

Learned counsel for the claimant and other respondents are agreeable to such suggestion.

Accordingly, the appeal is disposed of with a direction that the award in question is set aside and the case is remanded to the Tribunal for fresh decision after affording the parties reasonable opportunities to lead further evidence in light of the questions framed by this Court in order dated 26.12.2016. Then after hearing learned counsel for the parties, the claim petition be decided afresh.

Since the case is quite old, the whole exercise be completed within six months from the date of receipt of copy of the order there.

Consequently, the cross objection petition No. 289-CII of 2016 filed by the Insurance company is also disposed of.

It is directed that claimant shall not be required to refund the compensation amount received by her after furnishing surety, till the fresh award is passed by the Tribunal. The surety furnished will also remain intact.

Parties through counsel are directed to appear before the Tribunal on 29.7.2019.

The Lower Court record, if received, be also dispatched immediately

(H.S. Madaan)
Judge

10.7.2019
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No