IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2439 of 2020 (O & M)
Date of decision: 26.11.2020

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National Insurance Company Ltd. ....Petitioner(s)

Versus

Bita Devi and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Paul S. Saini, Advocate,
for the appellant.

(Proceedings are conducted through video conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

The present appeal filed by the Insurance Company is directed against the award dated 19.11.2019 passed by the Motor Accident Claims Tribunal, Karnal, which has granted compensation of Rs.18,70,000/- alongwith interest @6% per annum from the date of filing the petition to the claimants on account of the death of Jarnail Singh.

Counsel for the Insurance Company has argued that the deceased did not maintain sufficient distance from the vehicle in front and the collision took place with the offending vehicle bearing No. UP-15-DT-4809 from behind and, therefore, negligence as such was on account of the deceased. He has placed reliance upon the judgment of the Apex Court in ***Nishan Singh and others vs. Oriental Insurance Company Ltd. and others, 2018 AIR (SC) 2118*** in this context.

A perusal of the impugned award would go on to show that the claim had been made on account of the accident which took place on 03.06.2018 when the deceased was driving the truck when he reached near

Radha Swami Dera and Bhagwati Vaishno Punjabi Dhaba on Ladwa Indri road towards entry side at 3.00 a.m. The FIR had also been lodged on 03.06.2018 against Subhash Sharma, the driver of the offending vehicle. The widow of the deceased stepped into the witness box and claimed that the deceased was 34 years of age and a driver by profession and earning Rs.20,000/- per month and they were fully dependent upon the income of the deceased. Thus, a claim of Rs.50,00,000/- was raised.

Similarly, the claimants also examined Ramphal and Prem Chand as PW-2 and PW-3, who have stated that the accident had taken place due to the rash and negligent driving of respondent no. 1, who had stopped the truck for a while and ran away after leaving the truck at the spot. The MACT had examined the site plan (Ex.P-13) and came to the conclusion that the driver of the offending vehicle had never challenged the criminal proceedings before the senior police authorities that he was falsely implicated in the criminal case. Resultantly, it was held that the presumption was drawn that the accident was caused by him due to rash and negligent driving.

It is pertinent to notice that no oral evidence had been produced either by the driver of the offending vehicle or the owner. Similarly, the insurance company only has tendered the copy of the insurance policy (Ex.R-7) and closed its evidence. Thus, they failed to even examine Subhash Sharma, the driver of the offending vehicle in any manner in which the accident took place.

In such circumstances, it cannot be said that the insurance company as such can fall back on the judgment in *Nishan Singh's case (supra)* to submit that the issue no. 1 had been wrongly decided. The onus was upon the claimants who have accordingly examined three witnesses in their support of their claim. In order to rebut their case, it was the duty of the insurance company to have examined driver or any other person in support of its stand. In the absence of having done so, it now cannot take the defence that it was the fault of the deceased who was driving the truck behind the offending vehicle and rammed it from behind. Subhash Sharma has not been examined to state that there was some specific reason that he had to apply the breaks due to which the vehicle from behind had come and hit him with such a force that the deceased died in the said accident. The judgment which has been relied upon is where the claim petition had been dismissed by the MACT and also by the High Court. Resultantly, the findings as such that the driver of the Maruti Car was negligent were upheld and the only compensation which was granted was under Section 140 of the Motor Vehicles Act, 1988. Therefore, the said judgment would not be applicable in the facts and circumstances of the case as the MACT had applied its mind to the width of the road and the distance maintained by the driver of the car on the basis of the evidence produced in that case.

While coming to the issue of compensation, the Tribunal has rightly taken income at Rs.10,000/- per month as the deceased was 34 years of age and a professional driver. He was also maintaining a family of five members apart from his parents, who are also the claimants in the petition.

In such circumstances, the Tribunal has taken his age as 34 years on the basis of the claim in the petition and added 25% increase for future prospects and the monthly income has, thus, been assessed at Rs.12,500/- in view of the law laid down by the Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (SC)***

1009. The annual income has, thus, been taken as Rs.1,50,000/- and deduction of 1/4th has been put on account of the six dependents keeping in view the law laid down in ***Sarla Verma and others vs. DTC and others, 2009 ACR (SC) 1298*** to fix the dependency of Rs.1,12,500/- and apply a multiplier of 16. Similarly, Rs.40,000/- has been awarded as consortium. A sum of Rs.15,000/- towards loss of estate and Rs.15,000/- as funeral expenses to take the grand total at Rs.18,70,000/-. Thus, the benefit of 6% interest has also been granted, which cannot be said to be on the higher side.

Therefore, the award of the MACT does not seem to be suffering from any illegality or infirmity which would warrant interference as the amount awarded does not seem to be excessive in any manner.

Resultantly, the appeal is dismissed in limine.

26.11.2020 (G.S. SANDHAWALIA)
shivani JUDGE

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