S.No.102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision:21.01.2020

1. FAO No.5302 of 2010 (O&M)

National Insurance Co. Ltd. .....Appellant

Vs.

Smt. Parkash Kaur and others .....Respondents

2. FAO No.823 of 2011 (O&M)

Smt. Parkash Kaur and others .....Appellants

Vs.

Karanjit Singh and another .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. R.C. Gupta, Advocate for the appellant in FAO No.5302 of 2010 and for respondent No.2 in FAO No.823 of 2011.

Mr. Satinder Khanna, Advocate for the appellants in FAO No.823 of 2011 and for respondents No.1 to 5 in FAO No.5302 of 2010.

Mr. Shubham Goyal, Advocate for Mr. Mukul Aggarwal, Advocate for respondent No.1 in FAO No.823 of 2011 and for respondent No.6 in FAO No.5302 of 2010.

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<u>Rajbir Sehrawat, J.(Oral)</u>

This order shall dispose of above said two appeals which have been filed against the award dated 24.05.2010 passed by Ld. Motor Accident Claims Tribunal, Shahid Bhagat Singh Nagar. In one appeal, the Insurance Company has challenged the award qua its liability, as well as, on merits, whereas in the second appeal, the claimants have sought enhancement of the amount as awarded by the Tribunal.

The brief facts giving rise to the present appeals are that; the claim petition was filed by wife and minor children of deceased Hardyal Singh with assertion that on 04.12.2005, the deceased Hardyal Singh was driving his motor cycle bearing No.PB-32E-4985; and was going from

Nawanshahr to Banga. Lakhbir Singh and Balram Singh were following him on their motor-cycle bearing No.PB-32E-4730. At about 6:00 P.M, when the deceased reached near National Cold Storage; in the area of Village Jindowal; then the offending Qualis Car; bearing No. HR-68T-3551, being driven rashly and negligently by the driver- Karanjit Singh; tried to overtake the truck going ahead of it and came on the wrong side of the road and thereby smashed the motor-cycle being driven by deceased Hardyal Singh. In the said accident, deceased Hardyal Singh sustained multiple injuries and his motor-cycle was totally damaged. Lakhbir Singh and Balram Singh witnessed the accident and they had taken the deceased to Civil Hospital Banga; where the deceased was declared brought dead. Accordingly, it was alleged that the accident had taken place due to rash and negligent driving of the above said vehicle Qualis. It was further alleged that the deceased was of the age of 50 years and was employed as Special Assistant in the State Bank of India. He was drawing a salary of Rs.22,358/- per month. Accordingly, the claim petition was filed.

The claim petition was resisted by the driver. Besides taking the routine preliminary objections, it was alleged that a false FIR has been registered against him. The accident had taken place with the vehicle of one other person named Ramesh Kumar Sekri. Therefore, the vehicle being driven by him has wrongly been involved in the case. It was also asserted by him that no accident had taken place with his vehicle on 04.12.2005. The other averments in the claim petition were also denied. The respondent No.2/ Insurance Company of the alleged vehicle in question also filed separate reply in which it was alleged that the claim petition was collusive in nature, between the petitioner and the respondent No.1. The vehicle insured by the respondent- Insurance Company was not at all involved in the accident. Still further, it was also alleged that the driver of the offending vehicle was not holding a valid and effective licence at the time of accident. There was no valid route permit and fitness certificate at the time of the accident. Other averments in the petition were also denied.

In the evidence, the claimant herself appeared as PW1 and examined the eye witness Balram Singh as PW2 and Narinder Kumar as PW3 and closed the evidence after tendering the salary certificate Ex.P1, post mortem report Ex.P2 and the copy of the FIR Ex.P3, as well as, copy of the return Ex.P4. On the other hand, the driver-cum-owner appeared as a witness and examined one more witness. Besides this, the Insurance Policy of the vehicle was also placed on record as Ex.R6 and verification report was placed on record as Ex.R7.

After appreciating the respective stands and the evidences of the parties, the Tribunal upheld the claim of the claimants. The Insurance Company was held liable to make the payment of the compensation. The age of the deceased was taken as of 50 years on the basis of the post mortem report and the unrebutted assertions made in the petition. The salary of the deceased was taken at Rs.24097/- per month. Out of that, Rs.1700/- was deducted as income tax as per the salary certificate. One third was deducted on account of personal expenses. Besides this, another deduction of Rs.6,548/- was also made by the Tribunal, on account of pension (which could be family pension only). Therefore, the dependancy of the family was taken at Rs.9,383/- per month. The multiplier of 11 was applied. Number of multiplier was further bifurcated into two parts. Eight years was taken as service tenure and, accordingly, the compensation was calculated by taking the annual dependancy as mentioned above. Three years were taken as a period after retirement and, accordingly, the amount was calculated for these three years . Hence, a total of Rs.10,69,662/- was awarded as compensation. An amount of Rs.5,000/- was awarded for the loss of consortium to the widow and Rs.2,000/- was awarded as funeral charges, taking the total compensation to Rs.10,76,662/-. It is against this award that both the appeals have come up.

One more aspect which deserves to be mentioned is that during hearing of the present appeals, since the Insurance Company had raised the objection qua the identity of the vehicle saying that some other vehicle was involved in the accident; and only subsequently the name of the vehicle insured by the Insurance Company was involved, therefore, the file of the criminal case regarding this accident was also ordered to be summoned. However, today counsel for the Insurance Company himself has produced the order passed by the trial Court in the criminal case. The judgment shows that, in fact, the driver of the vehicle insured by the Insurance Company only; has been held liable and has been convicted for the offence of negligent driving. The same was the finding recorded by the Motor Accidents Claims Tribunal as well.

In view of the above fact, the counsel for the Insurance Company has not seriously disputed this fact, and this Court also does not find any substance in the argument of the Insurance Company that the vehicle insured by the appellant- Insurance Company was not involved in the accident. The Tribunal has rightly held the vehicle to be involved in the case; on the basis of the evidence led before the Tribunal itself.

Learned counsel for the Insurance Company has further submitted that the salary certificate itself shows that an amount of Rs.620/- was being paid to the deceased as fixed personal allowance. Therefore, by any means, this has to be deducted from the salary of the deceased. Similarly, the other allowances, which would be personal in nature, should also have been deducted by the Tribunal. It is further contended by counsel for the appellant that the Tribunal has awarded interest at different rate, in case the compensation amount is not paid within three months. Accordingly, it is submitted that this kind of award of interest is a penal interest, and it could not have been awarded by the Tribunal.

On the other hand, counsel for the claimant has fully supported the award passed by the Tribunal, so far as the factum of the accident and liability of the Insurance Company is concerned. However, counsel for the claimant has also pointed out that the Tribunal has wrongly applied the deduction of one third. Instead, as per the judgment of the Supreme Court rendered in **2009(6) SCC 121 – Sarla Verma and others Vs. Delhi Transport Corporation and another**, the deduction in this case has to be only one fourth. Still further, the multiplier has also been applied on the lower side. The multiplier should have been 13, as per the judgment of the Supreme Court rendered in **Sarla Verma's case (supra).** Counsel has also argued that bifurcation of the period of multiplier into service tenure and after retirement tenure is also not sustainable. Accordingly, it is submitted that multiplier should be taken as 13. The deduction has to be only $1/4^{th}$ and accordingly, the amount of compensation has to be enhanced. Still further, it is submitted that the interest, in fact, is awarded on lower side. The interest should have been at a flat rate of 9% per annum.

Having heard learned counsel for the parties qua quantum as well, this Court finds substance in the argument of the learned counsel for the Insurance Company that the fixed personal allowance which was being received by the deceased has to be deducted from the salary of the deceased for the purpose of assessing dependency because it is exclusively personal in nature. Accordingly, an amount of Rs.620/- has to be deducted from the salary of the deceased. So far as the other allowances are concerned, there is nothing on record to show as to what other personal allowances formed part of the salary of the deceased. Hence, the salary of the deceased after deduction of income tax has to be taken as per the salary certificate; minus the amount of fixed personal allowance which is mentioned as Rs.620/- per month. Accordingly, the salary of the deceased is taken at Rs.21,777/-.

Since the age of the deceased has rightly been taken at 50 years as per the post mortem report and unrebutted averments in the petition, therefore, a multiplier of 13 would be applicable as per the judgment of Hon'ble the Supreme Court rendered in **Sarla Verma's case (supra)**. Even the deduction has to be only 1/4th as per the same judgment. Further, this Court does not find any ground to deduct the amount of pension/ family pension; which has been done by the Tribunal. Therefore, the deduction on account of the pension has to be set aside. Still further, the bifurcation of the number of multiplier in between 8 and 3, as resorted by the Tribunal, does not find any reasonable basis for that. Hence, the multiplier is taken as a single figure of 13. Besides this, as per the judgment of the Supreme Court in **Sarla Verma's case (supra)**, the claimants are entitled to addition of amount on account of future prospects as well, which is quantified at the rate of 15%. The claimants are also entitled to Rs.70,000/- on account of conventional heads. The interest on this amount of compensation is made at flat rate of 7% P.A. Accordingly, the compensation payable to the claimants comes to be as calculated hereinbelow:-

Calculation of Compensation

Monthly Salary	**Rs.24,097/-**
Less Personal Allowance & Income Tax Rs. 2,320/- **(Rs.620 + Rs.1700/-)**	**Rs.21,777/-**
Plus Future Prospects @ 15%(Rs.3,267/-)	**Rs.25,044/-**
Less Personal Expenses @ 25% (Rs.6,261/-)	**Rs.18,783/-**
Yearly dependancy (Rs.18,783 x 12)	**Rs.2,25,396/-**
Multiplier of 13	**Rs.29,30,148/-**
Plus conventional heads (Rs.70,000/-) **(Loss of Estate = 15,000/-** **Loss of consortium = 40,000/-** **Funeral Expenses =15,000/-)** **Plus 7% interest on this amount of compensation**	**Rs.30,00,148/-**

Both the appeals are partly accepted and the award passed by the Motor Accidents Claims Tribunal, SBS Nagar is modified in the terms mentioned above.

January 21, 2020 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No