IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.10045 of 2014 (O&M)
Date of decision: 23.01.2020

United India Insurance Co. Ltd. ... Appellant

Versus

Amarjit Kaur and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Lalit Garg, Advocate for the appellant.

None for respondents No.1 to 5.

Ms. Jaspreet Kaur, Advocate for
Ms. Riffi Bala, Advocate for respondent No.6.

Respondent No.7 already ex parte.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 10.09.2014 passed by the Motor Accidents Claims Tribunal, Ferozepur whereby compensation has been assessed on account of death of Bans Singh in a motor vehicular accident that took place on 05.05.2012.

Counsel for the appellant has assailed the award on various counts. It is argued that Nirmal Singh claimant No.2 lodged DDR recording therein that no one was responsible for the accident. Nirmal Singh or family of the deceased never made any effort to lodge FIR or initiated criminal proceedings against Lakhwinder Singh, driver of offending car No.PB-03-B-8966. It is further argued that Nirmal Singh appeared in the witness box and changed his stance by raising plea with regard to accident being the result of rash and negligent driving of offending car driven by Lakhwinder Singh. According to counsel, in view of serious contradiction in the first version recorded by Nirmal Singh and his testimony before the Tribunal coupled with that there being no effort on behalf of claimants to register FIR against Lakhwinder Singh, findings recorded by the Tribunal on issue No.1 are liable to be set aside. For this purpose, reliance has been placed upon judgment of this Court **Paramjit Kaur and ors. Vs. Nahar Singh and ors., FAO No.8848 of 2014 along with connected case, decided on 21.02.2017.** In the alternative, it is argued that in case the offending vehicle is held responsible for the occurrence, the present is a case of contributory negligence of the deceased as there was head on collision between motorcycle driven by Bans Singh and offending car.

With regard to quantum of compensation, it is argued that Tribunal has assessed income of the deceased at Rs.8000/- per month but minimum wage at the relevant time was approximately Rs.5000/- per month. Addition in income for future prospects and compensation under conventional heads may be modified in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Another submission made by counsel is that since the vehicle was used for hire or reward as against policy of insurance issued in respect of private car, the insurance company cannot be fastened with liability to pay compensation or at least should be allowed right of recovery against the insured after payment of compensation to claimants. To bring home his contention, he has pointed out that Malkiat Kaur, Clerk, District Transport Office, Bathinda RW3 proved that Gian Singh son of Atma Singh obtained contract carriage permit for vehicle bearing No.PB-03-V-8966 for the period from 02.7.2010 to 01.07.2015 and copy of permit was marked as Ex.R7.

There is no representation on behalf of respondents No.1 to 5, earlier represented by a counsel.

Counsel for respondent No.6 has supported findings of the Tribunal holding the insurance company liable to pay compensation.

The plea of claimants is that on the fateful day of 05.5.2012 Bans Singh had gone to Talwandi Bhai on motorcycle No.PB-47-B-8092. Nirmal Singh had also gone to Talwandi Bhai on another motorcycle. After completing his work at Talwandi Bhai, deceased was coming back to his village. Nirmal Singh followed him on a separate motorcycle. Manpreet Singh son of Sukhmander Singh working in a workshop at Talwandi Bhai took lift from Bans Singh (deceased) and he sat on pillion seat of motorcycle. At about 7 pm, when they reached 2 kms short of village Sekhwan, offending vehicle came from the opposite side at a very high speed and in a rash and negligent manner. Bans Singh tried to take his motorcycle on the katcha path of the road but offending vehicle struck with motorcycle of deceased. Bans Singh and Manpreet Singh along with motorcycle fell on the road. Bans Singh received multiple injuries. Manpreet Singh was taken to the hospital.

Nirmal Singh appeared in the witness box and tendered into evidence his duly sworn affidavit wherein he reiterated the above noticed version raised by the claimants. Counsel for the appellant has failed to point out any facts elicited in cross examination of Nirmal Singh to discard or disbelieve his testimony. Indeed, contents of DDR recorded at the behest of Nirmal Singh were not put to the witness. In cross examination, Nirmal Singh stated that he put his signatures on the statement recorded by the police. He did not know if his statement was correctly recorded by the police or not. He denied the suggestion that his statement was correctly recorded by the police or a false story has been concocted to claim compensation. Keeping in view the aforesaid, the appellant cannot derive advantage to its contention from the facts recorded in the DDR. However, counsel for the appellant, in response to a query, would fairly inform that in the DDR, particulars of the offending vehicle have been specifically recorded. Even if Nirmal Singh had recorded in DDR that no one was responsible for the accident but later he realised that accident is the result of rash and negligent driving of offending vehicle, his statement on oath recorded before the Tribunal and subject to cross examination has to be given primacy vis-a-vis statement recorded in the DDR. In this context, reference can be made to judgment of this Court **Bansi and another Vs. Vikas, FAO No.7213 of 2010, decided on 29.08.2012.** Keeping in view testimony of Nirmal Singh that deceased had taken the motorcycle towards katcha path but still the offending vehicle hit the motorcycle, the mere fact that there was head on collision *ipso facto* is not sufficient to attribute contributory negligence to the deceased. In this view of the matter, I do not find any reason to interfere in findings of the Tribunal on issue No.1. Accordingly, the same are affirmed.

This brings the Court to quantum of compensation assessed. The Tribunal awarded Rs.10,82,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.8000/-
Addition in income for future prospects	15%
Multiplier	13
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.9,56,904/- (rounded off to Rs.9,57,000/-)
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-

The plea of claimants is that deceased was working as an agriculturist and had two acres of land. He was also running a combine and straw machine on rent. He had 5-6 buffaloes and selling milk thereby earning Rs.15,000/- per month. They examined Dharminder Kumar PW3 to prove J forms Exs.P4 and P15 with regard to sale of crop. The Tribunal has noticed that in J form, name of the customer is mentioned as Harbans Singh but there is nothing on record suggestive of the fact that Bans Singh was also known by the name of Harbans Singh. The deceased was 50 years old at the time of unfortunate occurrence. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with that deceased was owner of two acres of land, income of the deceased is assessed as Rs.6500/- per month. As the deceased was 50 years old, claimants shall be entitle to addition in income for future prospects @ 10%. Multiplier applied by the Tribunal is correct and affirmed.

The claim application has been filed by the widow, two sons, one daughter and mother of the deceased. Amarjit Kaur, widow of the deceased appeared in the witness box and stated that Nirmal Singh and Rupinder Singh are married and having their families and living separately. However, there is no evidence with regard to income of Nirmal Singh and Rupinder Singh. Even otherwise, if Nirmal Singh and Rupinder Singh were earning hands, they cannot be denied their entitlement to loss of estate. When the case is examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Birender and ors., Civil Appeal Nos.242-43 of 2020 arising out of SLP (Civil) Nos.976-77 of 2020, decided on 13.01.2020**, admissible deduction would be $1/4^{th}$. In this manner, loss of dependency is calculated at Rs.8,36,550/- [(6500 x 12 x 13) + (10% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.9,06,550/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,75,450/- (10,82,000 – 9,06,550). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appellant has raised an issue that offending vehicle was used for hire or reward, therefore, the insured is guilty of violating the terms and conditions of insurance. The Tribunal has dealt with this aspect of the matter in para 21 of the award. The appellant has sought to substantiate its plea in this regard merely because there was a contract carriage permit obtained by Gian Singh in respect of the offending vehicle. Lakhwinder Singh, driver of the vehicle appeared in the witness box and deposed that owner of the offending vehicle is his friend and he had taken the vehicle for personal use and was travelling along with his wife. The testimony of Lakhwinder Singh is more than sufficient to prove that at the relevant time, the offending vehicle was not used for hire or reward. There was no evidence led by the insurance company that offending vehicle was ever used for hire or reward, in contravention of terms and conditions of policy obtained by the insured. That being so, the Tribunal has rightly negated this plea of the insurance company while deciding issue No.4-A.

No other point has been raised.

In view of what has been discussed hereinbefore, the appeal stands disposed of in the aforesaid terms.

23.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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