111 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CM No.8591-CII of 2020 with
CM No.9044-CII of 2020 &
XOBC No.52 of 2020 in/and
FAO No.734 of 2014
Date of Decision: 08.10.2020

Poonam Devi and others

.... Appellants

Versus

Ajmind Singh and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Ashit Malik, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for the applicant-respondent No.3-Insurance Company.

(Heard through Video-Conferencing)

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MEENAKSHI I. MEHTA J. (ORAL)

CM No.8591-CII of 2020

This application has been moved with a prayer for fixing an actual date of hearing in the main appeal.

For the reasons recorded in the application, the said prayer is hereby allowed.

Let the main appeal be taken up for hearing today itself.

CM stands disposed of.

CM No.9044-CII of 2020 in XOBC No.52 of 2020 in FAO No.734 of 2014

This application has been moved by respondent No.3-Cross Objector under Section 173 of the Motor Vehicles Act read with Section 151 of the Civil Procedure Code for seeking exemption from depositing the amount of Rs.25,000/- while filing the cross-objections as the Cross-Objector has already deposited the entire award amount with the Motor Accident Claims Tribunal (for short 'the Tribunal).

Learned counsel for the appellants does not dispute or rebut the factum of the deposit of the entire amount of compensation, as awarded by the Tribunal, by respondent No.3-Cross Objector.

In view of the afore-discussed facts and circumstances, the present application is also allowed.

FAO No.734 of 2014 and XOBC No.52 of 2020

The above-said appeal as well as the Cross objections are being taken up together for discussion and disposal as these have arisen out of the same Award as passed by the Tribunal on 22.10.2013.

The said appeal has been filed by the appellants against the respondents for seeking enhancement of the amount of compensation as awarded by the Tribunal in their favour vide the above-said Award and the said Cross-objections have been preferred by respondent No.3-Insurance Company, which has been saddled with the liability to pay the award amount to the appellants.

The appellants herein (claimants before the Tribunal) had preferred the petition against the respondents before the Tribunal seeking compensation to the tune of Rs.25 lacs on account of the death of Vikram Singh, the husband of appellant No.1 and father of appellants No.2 and 3, in a motor vehicular accident which took place on 02.06.2012 due to rash and negligent driving of the offending vehicle, i.e. car bearing registration No.HR22G-0331 by respondent No.1, which was owned by respondent No.2 and insured with respondent No.3.

After perusing the evidence as led by both the parties on the record in support of their respective contentions and after hearing their counsel in the said claim petition, the Tribunal awarded a sum of Rs.8,31,000/- to the appellants-claimants as compensation along-with interest at the rate of 7% per annum from the date of institution of the petition till its realization, while holding the respondents liable, jointly and severally, to pay the said amount to the appellants-claimants.

It is worthwhile to mention here that vide order dated 30.05.2014 as passed in the present appeal, the service of notice upon respondents No.1 and 2 has been exempted.

I have heard learned counsel for the appellants (claimants) as well as learned counsel for respondent No.3-cross objector in the present appeal and also on the cross-objections and have also perused the record thoroughly.

Learned counsel for respondent No.3-Cross Objector has pointed out that while ascertaining the monthly income of deceased

Vikram Singh for the purpose of calculation of the amount of compensation to be paid to the appellants (claimants) on account of his death, the Tribunal fell in error while considering his monthly income to be Rs.6000/- despite the fact that no evidence was led by the appellants before the Tribunal to prove his monthly income and also the fact that the minimum rate of the monthly wages payable to a daily worker, as prescribed by the State of Haryana, in June, 2012 was Rs.4,847/- for unskilled labourers, Rs.5,107/- for semi-skilled labourers and Rs.5,367/- for skilled labourers and thus, on the basis of the erroneous presumption regarding the monthly income of the deceased, a higher amount of compensation has been granted to the appellants by the Tribunal whereas the monthly income of the deceased, in absence of any evidence on the record, should have been taken to be Rs.4,847/- by considering him as an unskilled labourer.

However, learned counsel for the appellants has argued that the deceased was a Sports Person and had participated in several sports events and he was a professional Gym Trainer and as such, he was earning Rs.25,000/- per month and therefore, the Tribunal should have calculated the amount of compensation by taking his afore-said salary into consideration.

A perusal of the impugned Award reveals that in para No.20 therein, the Tribunal has categorically mentioned that the claimants, i.e the present appellants, had placed on record the copies of the Sports

Certificates of the deceased as Exhibits P-9 to P-19 and in view thereof, it could be presumed that the deceased was working in a Gym and must be earning around Rs.6,000/- per month.

From the above-discussed observations, it becomes quite explicit that the deceased was a Sports Person and had participated in the several sports events. It being so, his earning capacity cannot be equated to that of an unskilled, semi-skilled or skilled labourer. Therefore, no fault can be found with the observation of the Tribunal to the effect that the deceased must be earning around Rs.6,000/- per month.

It is also pertinent to mention here that while addressing arguments, learned counsel for the appellants has sent a calculation sheet, through E-mail, wherein the claim of the appellants for enhanced compensation has been segregated under different Heads and the amount of proposed enhanced compensation has been specified as Rs.4,61,400/- while claiming the interest @ 7.5% per annum and learned counsel for respondent No.3-Insurance Company/cross-objector has also been supplied the copy of this calculation sheet as admitted by him.

Learned counsel for respondent No.3-Insurance Company, after perusing the above-said calculation sheet, raises objection regarding the monthly income of the deceased as ascertained by the Tribunal and also qua the rate of interest, i.e. 7.5% per annum and argues that the rate of interest is on the higher side as the Tribunal has granted the interest on the awarded amount of compensation @ 7% per annum.

As regards the objection *qua* the monthly income of the said deceased, this Court has categorically observed in the preceding paragraphs that the Tribunal has correctly ascertained his monthly income to be @ Rs.6000/-. So far as the rate of interest is concerned, a bare perusal of the impugned Award reveals that it has been granted by the Tribunal @ 7% per annum. Resultantly, the enhanced amount of compensation shall also carry the interest @ 7% per annum.

Learned counsel for respondent No.3-Insurance Company has not raised any other objection in respect of the said calculation sheet.

Again, it will not be out of place to mention here that learned counsel for the appellants shared the contact number of appellant No.1, the wife of the deceased at the "Whatsapp Group for Video Conferencing" and accordingly, she has been contacted through video-call on Mobile No.9812289909 and she has also been apprised about the details of the above-proposed enhanced amount of compensation as calculated by her counsel and she has also expressed her acceptability for the said amount.

As a sequel to the fore-going discussion, the cross-objections, as preferred by respondent No.3-Insurance Company, stand dismissed whereas the present FAO is hereby allowed to the extent that the Award dated 22.10.2013, as passed by the Tribunal, is modified to the effect that the appellants are awarded a sum of Rs.4,61,400/- on account of the enhanced compensation, in addition to the amount of compensation as already awarded in their favour vide the said Award. The abovementioned enhanced amount shall carry the interest @ 7% per annum from the date of institution of the claim petition before the Tribunal till its payment and the same shall be disbursed to the appellants in the same proportion and in the same manner, as mentioned by the Tribunal in the said Award.

(MEENAKSHI I. MEHTA)
JUDGE

October 08, 2020
rittu/seema

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