IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

258 XOBJC-34-CII of 2018 (O&M) in/and
FAO-6281-2017 (O&M)
Date of decision: 13.01.2020

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

IQBAL KAUR AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate and
Ms. Vandana Malhotra, Advocate for the insurance company.
Mr. Sushil K. Saini, Advocate and
Ms. Rameet Bakshi, Advocate for claimants/cross objectors.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO-6281-2017 and Cross-Objections No.34-CII-2018 as these have emerged out of the same award dated 06.05.2017 passed by the Motor Accidents Claims Tribunal, Rupnagar whereby compensation has been assessed on account of death of Mukhwinder Singh in a motor vehicular accident that took place on 18.06.2016 but the injured succumbed to injuries on 20.06.2016.

Counsel for the appellant would argue that findings of the Tribunal to attribute exclusive negligence to driver of offending truck bearing No.HP-12-D-7611 are erroneous and result of non appreciation of testimony of Amanpal Singh, one of the claimants, in right perspective. It is further argued that as the deceased did not take reasonable care while allegedly over-taking the offending truck, contributory negligence is liable to be attributed to the deceased and compensation to that extent cannot be paid to the claimants.

To assail quantum of compensation, it is argued that Tribunal has held that deceased was 62 years old and as such, the claimants are not entitle to addition in income for future prospects. Compensation allowed under conventional heads may be restricted to Rs.70,000/-. For this purpose, reference has been made to 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.**

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal on issue No.1 with the submission that deceased was travelling on motorcycle behind the truck and accident took place because truck driver suddenly applied brakes. It is further argued that the deceased applied brakes of motorcycle but could not stop as driver of truck applied sudden brakes.

Amanpal Singh, one of the claimants appeared in the witness box to discharge onus of issue No.1 that accident is the result of rash and negligent driving of offending vehicle. He tendered into evidence his affidavit by way of examination in chief. A relevant extract from para 4 of his affidavit, reads as follows:-

> xx xx It was about 8.00 p.m. When he reached near Panj Pyara Park, Anandpur Sahib, then in the

> meanwhile truck bearing No.HP-12-D-7611 driven by its driver i.e. respondent No.1 rashly and negligently in a zig zag manner was going ahead of Mukhwinder Singh. When Mukhwinder Singh was about to cross the truck then suddenly the driver of the truck applied brakes in the middle of the road. Due to which the handle of motorcycle of Mukhwinder Singh struck with rear right side of the truck. Due to impact, he fell down on the road and received multiple grievous injuries on head and other parts of the body.

In cross-examination, the witness has deposed that truck was driven at the speed of 60/70 Kmph. but motorcycle was at the speed of about 50 Kmph. If the truck was driven in a zig-zag manner and motorcycle was driven at a speed less than that of the truck, the deceased was obligated to ensure that there was safe passage available for him to cross the truck but he did not take reasonable care as such, the deceased himself was also negligent in the occurrence. The offending vehicle is a heavy transport vehicle, whereas the deceased was driving motorcycle. The driver of truck did not appear in the witness box to explain the circumstances under which the occurrence in question took place. Keeping in view the above, negligence attributed to the deceased is 20%. Claimants shall be entitle to 80% of compensation found payable by this Court. Findings of the Tribunal on issue No.1 are modified accordingly.

This brings the Court to compensation assessed.

The Tribunal awarded Rs.16,13,139/-, detailed hereunder:-

Annual income of the deceased	Rs.2,54,000/-
Addition in income for future prospects	15%
Multiplier	7
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.13,63,139/-
Expenses on funeral	Rs.50,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

The deceased was born on 01.10.1954 and died on 20.06.2016 and as such, he was more than 61 years old at the time of occurrence. Claimants shall not be entitle to addition in income for future prospects. The remaining criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. In this manner, loss of dependency is calculated at Rs.11,85,333/- [(2,54,000 x 7) – (1/3rd 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.12,55,333/- and 80% thereof is Rs.10,04,266/-.

The injured met with accident on 18.06.2016 and died on 20.06.2016 while lying admitted in PGI, Chandigarh and was also treated at Max Hospital, Mohali. Though the claimants have not produced bills with regard to medical expenses but they must have incurred expenses for treatment of the deceased. They are awarded Rs.30,000/- for expenses of medical treatment of which claimants are entitle to 80% i.e. Rs.24,000/-.

Compensation assessed is reduced to the extent of Rs.5,84,873/- [16,13,139 – (10,04,266 + 24,000)]. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms. As a natural corollary, cross-objections are dismissed.

13.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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