**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT
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FAO No. 64 of 2021 (O & M)
Date of decision : 24.8.2021

United India Insurance Company Limited ......Appellant

Vs.

Sunita and others ......Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.P. Gupta, Advocate, for the appellant

Rajbir Sehrawat, J. (Oral)

This appeal has been filed challenging the award dated 9.11.2020, passed by the Motor Accident Claims Tribunal, Hisar (in short 'the Tribunal'), whereby an amount of Rs. 26,09,200/-has been awarded as compensation to the claimants on account of death of Rohtash in a motor accident, in which the vehicle insured by the present appellant was involved.

The main facts as given in the award passed by the Tribunal are; that on 17.12.2018, Rohtash was returning to his house at Talwandi Rana on motor cycle bearing registration No. HR-20P-3015 from the fields of Deepak. Deepak was following him on his own motor cycle. When Rohtash reached near Dhandoor Pull (bridge); then the offending vehicle Maruti Suzuki Alto K-10 VXI car; bearing registration No. HR-80A-6445, being driven by respondent No.5-Anil Kumar in a rash and negligent manner, came from the backside and hit the motor cycle of Rohtash. As a result of the impact, the said Rohtash sustained injuries and succumbed to the said injuries. On account of the accident, FIR No.1224 dated 18.12.2018, under Section 279 and 304A IPC was registered at Police Station Sadar Hisar; against the driver of the offending vehicle. Claiming these facts and asserting therein that the deceased was of the age of 35 years and was earning an amount of Rs.20,000/-per month being engaged in agriculture work, the petition was filed by the widow and minor children of deceased Rohtash, as well as by his mother.

During the proceedings, the claimants examined the eye witness Deepak, who proved the case of the claimants. To prove the contents of the criminal case, the Investigating Officer of the case was also examined as a witness. Since no income was proved by the claimants, therefore, the Tribunal assessed the notional income of the deceased as Rs.12,000/- per month. As there were four dependents, therefore, 1/4th of the total income was deducted on account of personal expenses. Benefit of 40% of the assessed annual income was granted towards future prospectus. Multiplier of '16' was applied keeping in view the age of the deceased. Besides this, the funeral expenses of Rs.15,000/- and another amount of Rs.15,000/-was awarded towards loss of estates in terms of the judgment of the Hon'ble Supreme Court rendered in the case of **'National Insurance Copmpany Ltd. v. Pranay Sethi and others; (2017) 16 SCC 680'**. In terms of the same judgment, an amount of Rs.40,000/- was granted to the widow for loss of consortium and another amount of Rs.40,000/-each was granted to the children on account of loss of parental consortium. Besides this, another amount of Rs.40,000/-was granted to the mother of the deceased on account of loss of filial consortium. Accordingly, the total amount of Rs.26,09,200/-was awarded by the Tribunal. Assailing the said award, the present appeal has been filed by the Insurance Company.

Arguing the case, counsel for the appellant has submitted that the claimants have not led any evidence to show that the vehicle insured by the appellant-Insurance Company was involved in the accident. Therefore, the Insurance Company is not liable to pay the compensation at all. Even the negligence on the part of the driver of the offending vehicle is not proved on record. Counsel has further submitted that the income of the deceased has wrongly been assessed by the Tribunal on the higher side. The Tribunal should have assessed the income of the deceased as per the minimum wages prescribed by the State of Haryana at the relevant time. Accordingly, the compensation awarded to the claimants have to be reduced and the same is liable to be brought to the level of compensation for the loss of minimum wages, prescribed by the State of Haryana.

Having heard counsel for the appellant, this Court finds that the claimants have specifically pleaded in their claim petition that the vehicle mentioned in the claim petition was involved in the accident and the accident happened in the manner described in the claim petition. To prove negligence of driver of the offending vehicle two witnesses have been examined. However, the driver of the offending vehicle filed the written statement in the claim petition but did not even deny the factum of involvement of the vehicle in question in the accident, although the driver tried to side-track the issue of negligence by asserting that the driver of the offending vehicle was driving at a moderate speed and following the traffic rules. Further positive averments of the driver is that accident took place due to fast and negligent driving of the motor cycle by the deceased. However, even on this assertion of the driver of the offending vehicle that it was the fast and negligent driving of the deceased that the accident had taken place; no evidence has been led either by the driver of the offending vehicle or by the appellant- Insurance Company. Hence, the assertion of the claimants, as raised in the petition and as have been substantiated by examining the eye witnesses and by leading the material of the police case in the evidence, have gone un-rebutted. Therefore, this Court does not find any illegality or perversity with the finding recorded by the Tribunal qua the driver of the offending vehicle being rash and negligent in driving of the vehicle.

Though counsel for the appellant has submitted that the Tribunal has gone wrong in law in assessing the income at Rs.12,000/-per month on notional basis, however, even this argument of counsel for the appellant is not substantiated by anything on record. Although counsel for the appellant has submitted that the Tribunal should have followed the notification issued by the State of Haryana qua the minimum wages, however, the Insurance Company had not taken any steps to lead any evidence as to the minimum wages prevalent at the relevant time in the relevant area. In absence of any such evidence, the Tribunal has not committed any error in assessing the income of the deceased at Rs.12,000/-per month. Needless to say, that the accident is stated to have taken place on 17.12.2018. Even as per the prevalent market rates, as per the common knowledge, the income of even an un-skilled labourer at that time was more than Rs. 12,000/-per month. Hence, this Court does not find any error on the count of assessment of the income of the deceased as well.

No other point was argued.

In view of the above, finding no merit in the present appeal, the same is dismissed.

Since the main appeal is dismissed, therefore, CM No. 925-CII of 2021 also stands dismissed.

Since the appeal filed by the Insurance Company has been dismissed by this order, therefore, let the statutory amount deposited by the Insurance Company before this Court; be transferred to the concerned Tribunal for disbursing the same to the claimants and adjusting the same towards the payment of the compensation.

(RAJBIR SEHRAWAT)
JUDGE

24.8.2021
Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No