IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-39-2021 (O&M)

Date of decision: 23.04.2021

GENERAL MANAGER/AUTHORISED PERSON, APSRTC DEPOT MEDCHAL ... Appellant

Versus

KRIPA DEVI AND OTHERS ... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sanjay Verma, Advocate for the appellant.

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ANIL KSHETARPAL, J.

CM No.593-CII-2021

The delay of 30 days in filing the appeal is condoned for the reasons stated in the application.

Application is allowed.

Main Case

Through this appeal, the appellant assails the correctness of the award passed by the Motor Accidents Claims Tribunal, Gurugram, on 29.10.2019.

Respondents-claimants (aged mother, widow and two minor children of late Sh. Yashbir) filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation for the death of late Sh. Yashbir in a motor vehicular accident on 09.04.2016. It is the case of claimants that when late Sh. Yashbir coming back after purchasing household goods on a motorcycle, the offending bus bearing registration No.AP-11-Z-0091, being driven by respondent No.5 in a rash and negligent manner hit against the motorcycle. Resultantly, late Sh. Yashbir fell on the road and then run over by the rear wheel of the offending bus. The deceased was shifted to Military hospital but was declared brought dead. An FIR No.30 dated 10.04.2016 under Section 304-A IPC was registered against respondent No.5 at Police Station Bollaram, District Hydreabad. The deceased at the time of his death was aged about 39 years. He was serving in Indian Army as Havaldar, drawing monthly salary of Rs.76,163/-, posted at the relevant time at IEME Center, Sukundrabad. The claimants in order to prove their case examined Sachin as PW2. The appellant and respondent No.5 did not produce any evidence. Learned Motor Accidents Claims Tribunal on appreciation of evidence found that sufficient evidence has been led to prove that respondent No.5 was driving the vehicle in a rash and negligent manner resulting in the death of sole bread earner of the family. The Tribunal further held that the respondents-claimants are entitled to compensation of Rs.1,28,64,355/- along with interest @ 7.5% per annum.

Heard learned counsel for the appellant and with his able assistance perused the paper book.

Learned counsel for the appellant contends that the accident could not happen in the manner suggested. He contends that if the two vehicles coming from opposite direction had collided then the deceased would have come under the front wheel and not under the rear wheel. He further contends that there is an error in calculating the amount.

It may be noted here that the learned counsel failed to draw the attention of the Court to such defence in the written statement filed by the appellant or respondent No.5. Still further, attention of the Court was not drawn to any discussion before the Tribunal on this aspect. As noticed above, Mohd. Abdul Basheer, the driver of the offending vehicle did not appear in evidence. He was the person who could have deposed about the manner in which the accident took place. Learned counsel for the appellant has also failed to draw attention of the Court to the cross examination of PW2-Sachin, eye-witness on this aspect. In this situation, this Bench expresses inability to accept the argument.

Second contention with respect to calculation error is also without substance. This Bench has carefully examined the calculation. The Tribunal has found from the salary slip that the deceased drew total salary of Rs.76,163/- during the month of April, 2016. The Tribunal after deducting the amount towards AFPP fund subscription, AFPP refund and the amount of income tax came to the conclusion that for the purpose of calculation the income of the deceased is to be taken as Rs.63,182/- per month. Hence, annual income works out to Rs.7,58,184/- per annum. There is no error in the calculation by the Tribunal. Still further, keeping in view the fact that the deceased was 39 years of age at the time of his death, therefore, 50% addition of actual salary to the income of the deceased was made on account of future prospects as per the judgment passed by Five Judge Bench in **National Insurance Company Limited Vs. Pranay Sethi and Ors., (2017) 16 SCC 680**. Thereafter, the Tribunal applied 1/4th deduction towards personal expenses of the deceased. The deceased has left behind four dependents, thus, the appropriate deduction has been made. Thus, the Tribunal has arrived at a figure of Rs.8,52,957/- as annual dependency.

Hence, there is no error in the calculation. In view thereof, no ground to interfere in the award passed by the Tribunal is made out.

Dismissed.

23.04.2021 **(ANIL KSHETARPAL)**
ashok **JUDGE**

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