

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.626 of 2021 (O&M)

Date of Decision: 23.07.2021

Regional Manager, UP State Road Transport Corporation, Aligarh

....Appellant

VERSUS

Anjali and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sandeep Kotla, Advocate for the appellant.

ALKA SARIN, J.

Heard through video conferencing.

Present first appeal against order is directed against the award dated 31.03.2021 passed by the Motor Accident Claims Tribunal, Palwal (hereinafter referred to as 'the Tribunal').

Brief facts relevant to the present case are that the claim petition was filed on behalf of the wife, minor child and mother of the deceased, namely, Monu, seeking compensation of Rs.50,00,000/- on account of his death in a motor vehicle accident alleged to have taken place due to rash and negligent driving of bus bearing registration no.UP-81-AF-0785 (hereinafter referred to as 'the offending vehicle') owned by the appellant and driven by Haripal Singh, respondent no.4 herein.

The case as set up by claimants was that the deceased was 24 years of age at the time of the accident and was a driver by profession. Besides driving, he was also doing agricultural work and milk vending. His monthly income was stated to be Rs.20,000/-. Separate written statements were filed by the appellant and respondent no.4. On issue no.1, the Tribunal

found that the accident in question was not disputed and nothing could be extracted from the cross-examination of PW-2 to disprove the rash and negligent driving of the offending vehicle and further that the FIR was also registered on the same day and the driver of the offending vehicle is facing trial for the same. On issue no.2 it was held that the claimants, who are widow, minor son and mother of the deceased, are entitled for compensation to the extent determined by the Tribunal. The age of the deceased was taken as 23 years, 8 months and 8 days old at the time of accident. On the basis of law settled by the Hon'ble Supreme Court in Sarla Verma and ors. vs. Delhi Transport Corporation and another (2009) 6 SCC 121 and National Insurance Company Limited vs. Pranay Sethi and others 2017(4) RCR (Civil) 1009, the compensation was assessed as Rs.20,63,410/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

Learned counsel for the appellant has made twofold submissions, one is *qua* the quantum and second *qua* the manner of accident. Learned counsel for the appellant would contend that income of the deceased has wrongly been assessed and there was no cogent evidence *qua* the income of the deceased. Regarding the accident it has been contended by learned counsel for the appellant that the accident took place due to rash and negligent driving of the deceased himself.

I have heard learned counsel for the appellant.

Firstly, taking up the argument raised by learned counsel for the appellant *qua* the manner of accident, learned counsel for the appellant is not in a position to point out even an iota of evidence on the record to show that

the deceased himself was negligent in driving the vehicle. In fact it has been observed in the award by the Tribunal that Hem Parkash, conductor of the offending vehicle, appeared as RW-2 and reiterated the facts as deposed by the driver of the offending vehicle who has appeared as RW-1. However, in his cross-examination, RW-2 deposed that he was sitting with the driver on the day of accident but he was not aware as to how the accident in question happened. It has further been observed that nothing could be extracted from the cross-examination of PW-2 to dispute the rash and negligent driving. Further, the FIR itself was registered on the same date and the driver of the offending vehicle is facing criminal trial for the same. There is no evidence on the record to point towards the fact that the deceased was negligent or driving the vehicle in a rash manner. The reasoning given by the Tribunal cannot be disturbed with on this issue.

The second argument raised by learned counsel for the appellant *qua* income of the deceased, the Tribunal has held that no cogent and convincing evidence was led regarding income of the deceased and hence income of the deceased was assessed as per minimum wages i.e. Rs.9888/- per month, as applicable at the time of accident. I do not find any irregularity or illegality in the said assessment made by the Tribunal.

In view of the above, the appeal is dismissed being devoid of any merit.

Dismissed.

(ALKA SARIN)
JUDGE

23rd July, 2021
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO