IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2814-2020(O&M)
Date of decision:-01.11.2021

Ravinder Singh through his legal heirs

...Appellants

Versus

Gurmit Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ravinder Arora, Advocate
for the appellants.

Mr.R.S. Rana, Advocate
for respondents No.1 and 2.

Mr.Gaurav, Advocate for
Mr.Ashwani Talwar, Advocate
for respondent No.3.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that on 6.2.2018 claimant – Ravinder Singh along with his son Rajwant Singh was going towards Patiala on his Activa scooter; Rajwant Singh was driving the scooter on which Ravinder Singh was pillion riding; at about 5:00 p.m., when they reached bus stop of village Phagan Majra, Sirhind Road, then a car bearing registration No.PB-11-BE-5400 (hereinafter referred to as the offending vehicle) being driven in a rash and negligent manner by Gurmit

Singh – respondent No.1 came from behind without blowing any horn and struck against the Activa scooter, as a result both the riders fell down; Ravinder Singh suffered multiple injuries on his head, legs, chest, backbone and various parts of the body; he was taken to Colombia Hospital, however keeping in view his serious condition, he was referred to PGI, Chandigarh, where he remained admitted from 7.2.2018 to 8.3.2018, then he was taken to Aman Hospital, Bassi Pathana, District Fatehgarh Sahib, where he admitted from 9.3.2018 to 23.3.2018; he underwent head and brain surgeries. Since he was unconscious and had suffered a paralytic attack as a result of suffering injuries, the claim petition was filed by him through his wife Amritpal Kaur and son Rajwant Singh under Section 166 of the Motor Vehicle Act, 1988 against Gurmit Singh – driver, Swaraj Automotives Ltd, Kakrala Road, Tehsil Nabha, District Patiala – owner and Oriental Insurance Company Ltd, Branch Office at SAS Nagar (Mohali) – insurer of the car in question.

On getting notice, all the three respondents had appeared. Respondents No.1 and 2 filed a joint written reply, whereas resp[ondent No.3 came up with a separate written reply. All of them opposed the claim petition.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Tribunal reached the conclusion that claimant Ravinder Singh had received injuries in a motor vehicular accident on 6.2.2018 due to rash and negligent driving of the offending vehicle by respondent No.1 – Gurmit Singh, as result he was entitled to get compensation from driver, owner and insurance company of the offending vehicle.

Vide impugned award dated 19.10.2019, compensation of Rs.28,15,000/- with interest @ 7.5% per annum was awarded to the claimant payable by respondents with costs. Out of the compensation amount, a sum of Rs.10 lacs was ordered to be given to the wife of the injured, whereas remaining amount could be withdrawn by her for medical treatment of injured from time to time. It was further observed that since death is inevitable so on the happening of the same, the amount be disbursed equally amongst the surviving claimants. The split up of the compensation amount being as under:

	INJURY CASE	
	Age	55 years
	Occupation and income	Labourer Rs.9,000
Sr.No.	Head of claim	Wife and children of injured
1.	Add 10% of increase	Rs.9000+990 = 9990/- rounded off Rs.10000/-
2.	Multiplicand	10000 x 12= 1,20,000/-
3.	Multiplier	1,20,000 x 11 = 13,20,000/-
4.	Loss of income + future prospects	Rs.13,20,000/-
5.	Medical Bills	Rs.4,95,000/-
6.	Attendant charges	Rs.1,00,000/-
7.	Pain and suffering	Rs.3,00,000/-
8.	Future treatment charges	Rs.5,00,000/-
9.	Special diet charges	Rs.50,000/-
10.	Transportation charges	Rs.50,000/-
	Total	**Rs.28,15,000/-**

It may be mentioned here that though in the claim petition it was contended that claimant Ravinder Singh was an agriculturist by profession and he was doing dairy farming besides working as private driver earning Rs.35,000/- per month but in absence of any evidence in that regard, taking him to be a daily wager and his income was assessed to be Rs.9,000/- per month. In view of the disability certificate of the claimant Ex.379 showing disability suffer by him to be 90% requiring assistance for daily activities, the Tribunal found it safe to conclude that earning capacity of claimant would suffered to the extent of 100%, therefore, his permanent disability was held to be 90% qua the whole body. Therefore, loss of income was assessed as Rs.9,000/- per month; 10% addition was made towards future prospects. The income so arrived at was Rs.9,990/- rounded off Rs.10,000/-. The annual dependency was worked out to be Rs.1,20,000/- and considering age of the claimant to be 55 years at the time of accident, multiplier of 11 was applied arriving at compensation of Rs.13,20,000/-. Medical expenditure of Rs.4,94,770/- rounded off Rs.4,95,000/- was also awarded. In addition to that a sum of Rs.3,00,000/- was given towards pain and suffering, Rs.1 lakh as attendant charges besides providing compensation under various other heads including Rs.5 lakhs for future medical treatment. The liability to pay this amount was found to be joint and several of all the three respondents.

This award left the claimant aggrieved and he had approached this Court by filing the present appeal.

Notice of the appeal was given to respondents. Respondents No.1 and 3 had put in appearance through counsel.

It may be mentioned here that Ravinder Singh had expired during the pendency of the appeal and his widow – Amritpal Kaur, aged about 58 years and son Rajwant Singh aged about 30 years were brought on record.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant has contended that the Tribunal fell in error in taking the monthly income of the deceased to be Rs.9,000/- as against the claimed income of Rs.35,000/- from the avocation of agriculture, dairy farming and working as a private driver.

Whereas learned counsel for the respondents have contended that though in the claim petition, it was claimed that the claimant was earning Rs.35,000/- from all the three abovesaid avocations but no cogent and convincing evidence had been brought on record to show that. Therefore, the Tribunal was justified in taking the claimant to be a daily wager and assessing his monthly income to be Rs.9,000/-.

After hearing the rival contentions, I find that the Tribunal was justified in considering the claimant to be daily wager and taking his monthly income to be Rs.9,000/-. Merely by alleging that the claimant was working as an agriculturist, dairy farmer and a private driver earning a total amount of Rs.35,000/-, these contentions do not get proved. It is a settled law that a fact pleaded has to be proved by leading evidence unless it is admitted by the other party. There is no admission on behalf of the respondents with regard to the monthly income of the claimant to be Rs.35,000/-. Therefore, the criteria adopted by the Tribunal and assessing income of the claimant as Rs.9,000/- per month treating him as a daily wager is perfectly right and no fault can be found with the same.

Another argument advanced by learned counsel for the claimant was that the interest awarded by the Tribunal @ 7.5% per annum is on the lower side. He has referred to judgment by the Apex Court i.e. ***The Oriental Insurance Company Ltd. Versus Kahlon @ Jasmail Singh Kahlon (deceased) through his Legal representative Narinder Kahlon Gosakan and another*** passed in Civil Appeal No.4800 of 2021 arising out of SLP(C) No.2873 of 2021.

However, I find that keeping in view the facts and circumstances of the case, the present bank rate of interest in saving account as well as lending rate, the interest awarded @ 7.5% per annum is quite adequate and sufficient.

Learned counsel for the appellant has further contended that the amount of Rs.1,00,000/- awarded by the Tribunal towards charges for attendant is on lower side because the claimant had been rendered a cripple as a result of suffering injuries and required help and assistance round the clock.

However, I find that the amount awarded is adequate. The wife and son of the claimant were there to look after him and take care of him and awarding a sum of Rs.1,00,000/- towards attendant charges cannot be said to be on lower side. One more thing to be taken into view is that claimant was awarded a sum of Rs.3,00,000/- towards pain and suffering. Learned counsel for the claimant has very fairly conceded that in case of death of the injured this amount is not to be awarded. But here since the respondents have neither filed any counter appeal nor cross-objections, therefore, a sum of Rs.3 lakhs awarded under the head of pain and suffering cannot be deducted from the compensation.

As regards the other authorities referred to by learned counsel for the appellant i.e. ***Kajal Versus Jagdish Chand and others*** by the Apex Court passed in Civil Appeal No.735 of 2020 arising out of SLP(C) No.15504 of 2019 and ***Erudhaya Priya Versus State Express Transport Corporation Ltd.*** by the Apex Court passed in Civil Appeal Nos.2811-2812 of 2020 arising out of SLP(C) No.8495-8496 of 2018, those are not helpful to the claimant in seeking enhancement of compensation in the present case.

Therefore, I find little merit in the appeal and no ground is there to enhance the compensation already awarded by the Motor Accidents Claims Tribunal, SAS Nagar (Mohali).

Finding no merit in the appeal, the same stands dismissed.

01.11.2021 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No