IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8123-2014 (O&M)
Date of decision: 16.09.2021

Kitabo and others

...Appellants

Versus

Rajesh Kumar and others

...Respondents

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

Present: Mr. B.S. Saroha, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.3.

*****

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

On account of death of Joginder son of Dharambir, in a motor vehicular accident which took place on 25.02.2012 within jurisdiction of Police Station Sadar, Sonepat, statedly on account of rash and negligent driving of tractor bearing No.HR-10H-0563 by Rajesh Kumar-respondent No.1, such tractor belonging to respondent No.2-Satish Kumar, Ms. Kitabo-mother, Kavita-sister and Narender-younger brother, all residents of Village Rajpur, Tehsil Ganaur, District Sonepat had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Rajesh Kumar-driver, Satish Kumar-owner and Bharti Axa General Insurance Company Ltd., New Delhi-insurer of the offending tractor.

On getting notice, all the three respondents put in appearance and contested the claim petition by filing written statements. Issues on merits were framed. The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Sonepat (for short 'the Tribunal') vide award dated 28.05.2014, accepted the claim petition and awarded compensation of Rs.2,01,500/- to petitioner No.1 along with interest 7.5% p.a. to be paid by respondent No.3, whereas, petition qua petitioners No.2 and 3 stood dismissed.

Feeling aggrieved by the award on the point of insufficiency of compensation amount being awarded and petitioners No.2 and 3 having been denied any share in the compensation, petitioners have preferred an appeal before this Court, notice of which was given to the insurance company and it has put in appearance through counsel.

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

It may be mentioned here that the Tribunal while assessing the compensation had taken the age of deceased to be 19 years and his monthly income as Rs.4500/-. As far as these aspects are concerned, there is no reason to take a different view. However, the Tribunal omitted to make addition towards future prospects. In judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil) 1009**, it has been observed that when the deceased was below 40 years, then 40% of the amount is to be added towards future prospects. Doing that, the total income of the deceased is assessed as Rs.6300/-. Keeping in view the facts that the deceased was a bachelor, 50% of such amount is to be deducted on account of his personal expenses. The remaining balance comes out to Rs.3150/-, which amount is to be taken as dependency of his legal heirs/legal representatives. The annual dependency comes out to Rs.37,800/- (3150 X 12).

The Tribunal fell in error in adopting multiplier of 7 considering the age of petitioner Smt. Kitabo, mother of the deceased, whereas, the Tribunal should have considered the age of deceased while selecting the multiplier. This has been so clarified in judgment **Pranay Sethi's (supra)**. In that way, multiplier of 18 is to be used keeping in view the age of deceased. Therefore, the total compensation payable comes out to Rs.6,80,400/-.

The Tribunal has wrongly deprived Kavita, sister of the deceased and Narender, younger brother of the deceased, a share in the compensation, losing sight of the fact that ours is a society comprising families most of which are closely knit and the family members provide emotional and financial support to each other. A brother does support his siblings by providing financial assistance on occasion either in cash or fund and mostly contribute towards the marriage expenses of his sister and brother.

At the time of accident, Kavita was stated to be unmarried, whereas, Narender was younger to the deceased. Both of them could always look towards the deceased for financial support also. Under the circumstances, the impugned award to the extent of depriving Kavita and Narender a share in the compensation is modified accordingly, holding that they are also entitled to have a share in the compensation.

Now comes the aspect of grant of compensation under conventional heads, the claimants are entitled to get Rs.15,000/- on account of loss of estate and Rs.15,000/- towards funeral expenses in terms of Apex Court authority **Pranay Sethi (supra)**.

As far as the compensation under head loss of love and affection and loss of consortium, in view of the judgment by the Apex Court in **M.H. Uma Maheshwari & Ors. Vs. United India Insurance Co. Ltd. & Anr.**, in CA-2558-2020 decided on 12.06.2020, the claimants are entitled to get a sum of Rs.1,20,000/- (Rs.40,000/- each). In that way, the total compensation comes out to Rs.8,30,400/-.

The Tribunal has awarded compensation of Rs.2,01,500/-. In that way, additional compensation of Rs.6,28,900/- (Rs. 8,30,400-2,01,500) is awarded to all the three claimants payable by respondent-insurance company. Out of such compensation, Kitabo-appellant No.1 would get 80%, whereas, remaining 20% shall be shared by appellants No.2 and 3 in equal proportions. The claimants shall be entitled to get interest @ 7.5% p.a., on the enhanced amount of compensation from the date of filing of application till actual realization.

The appeal stands allowed with costs.

16.09.2021 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No