113 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2308-2005
Date of decision: 26.04.2022

Lata and others ....Appellants

versus

Gurdial Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sandeep Jasuja, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3-Insurance Company.

FATEH DEEP SINGH, J.

This first appeal is against an award dated 30.07.2004 of the learned Motor Accidents Claims Tribunal, Gurgaon. The claimants, Smt. Lata-widow, Abhishek @ Shanki, Chirag (both being sons) and Kesar by being the mother, have impugned these findings seeking enhancement of the compensation.

Heard counsel for both the sides and perused the records.

Since, the entire records of the case stood destroyed in the fire that occurred in the record room of this Court, however, the present averments are based on the remnants which could be recreated and reconstituted with the assistance of the various quarters.

The facts that needs to be recapitulated are that on 09.12.1999, Ashok Kumar (since deceased) was going in Delhi on a scooter bearing No. DL-95-3070 (in short 'ill-fated scooter') when trailer bearing No. HR-26-2477 (in short 'the offending vehicle') being driven by Ram Surat, owned by Gurdial Singh and insured by National Insurance Company Ltd. came in a rash and negligent manner and hit the scooter and without following due procedure and precautions having overloaded the tractor with protruding iron bars, strongly applied brakes, as a consequence of which, Ashok Kumar died. The deceased, as per the claim of the claimant, was aged around 37 years, running a Kiryana Shop and was earning Rs.60,000/- per month besides having Masala Factory and had total earnings of Rs.1,20,000/- per month. Upon which all the claimants were dependents and consequent upon his death were rendered destitute. The stand of the driver and the owner is of simplicitor denial denying any such accident having ever occurred and the insurer similarly denying that the vehicle in question ever insured with them and the vehicle was being driven in contravention of the provisions of law as such they were not entitled to pay any compensation amount. The Tribunal framed the following issues:-

1. Whether the accident in question was caused by respondent No.2 by driving a trailer bearing Regd. No. HR-26-2477 in a rash and negligent manner and caused the death of Ashok Kumar? OPP.
2. If issue No.1 is proved whether the claimants are entitled to any compensation on account of death of Ashok Kumar and if so, to what extent and from whom? OPP.
3. Whether respondent No.2 was not holding a valid and effective driving licence on the date of accident? OPR(3)
4. Whether terms and conditions of the insurance policy were violated by respondent No.1? OPR (3)
5. Relief.

On behalf of the claimants, Lajpat Narang, eye witness testified as PW-1 contributed acts of rash and negligent driving against the offending vehicle and driver and which is duly corroborated by the testimony of PW-2 and the FIR Ex.P-1 bearing No.1136/99 under Section 279/304-A IPC with Police Station Rajouri Garden, Delhi along with post mortem report Ex.P-3, recovery memo Ex.P-4 of the driving license and the truck Ex.P-5 are corroborative to the accident having taken place resulting in this accidental death of the deceased. Testimonies of PW-2-Smt. Lata Chugh and the evidence of the accident has totally remained unrebutted as neither the driver nor owner has testified to controvert the case of the claimant and therefore findings of the Tribunal are been upheld.

The quantum of compensation is the most hotly debated one for which issue No.2 has been framed. Though, the claimants claim that the deceased was running a grocery/kiryana shop besides running of firm by way of factory manufacturing Agmark Masala and have detailed the total earnings, however, to the query of the Court, the counsel for the appellant could not convince by what means, this earning has sought to be proved on the records. The mere income tax returns Ex.P-7 to Ex.P-21 does not fulfill the requirements. The Tribunal has rightly held that it is often seen as to the tendency of the claimants is to exaggerate their income and has critically evaluated documents on the records but has wrongly concluded that the earnings can be assessed to be Rs.2,000/- per month which certainly does not impresses the Court much, especially, in city like Delhi and maintaining a large family comprising of 04 persons which earning is much more less than the then prevalent DC rates of a daily wage earner. It is not in any manner refuted that the deceased was not running a small time business though not much proof by way of records could be led by the claimants who are supposed to establish so and, therefore, this Court by some amount of guesswork and hypothetical calculations, hold the per month earning of the deceased must be around Rs.5,000/-, therefore, this Court is assessing the annual income of Rs.60,000/- (5,000 x 12) and which is reasonable amount at that time when the accident took place and the economic status which is apparent from the records of the deceased. Keeping in view the age of the deceased and the nature of his avocation future prospects is assessed as 40% and the same comes to Rs.24,000/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.84,000/- (60,000 + 24,000).

Further, considering that the deceased would be spending $1/5^{th}$ of his earnings towards the living and personal expenses of the deceased and dependency of the claimants of whom two are minor children of school going age, the annual income dependency comes to Rs. 67,200/-.

Keeping in view the age of the deceased, the learned Tribunal had rightly applied the multiplier of 15 which is appropriate and the relative ages of the claimants and, therefore, the amount of compensation comes to Rs.10,08,000/- (67,200 x 15). The Tribunal has totally failed to consider the compensation under different heads. The family has lost their bread earner and which loss is certainly unbearable for the family especially for the children, young mother and the wife. Keeping in view that the family has also spent money on the last rites and ceremonies besides loss of love, care and protection of the family by this tragic death of their sole bread earner and under all these heads, a sum of Rs.5,50,000/- is assessed and, therefore, total award amount comes to Rs.15,58,000/- (10,08,000 + 5,50,000).

Claimants No.1 to 3 shall be entitled to 30% each of the amount of compensation and claimant No.4 shall be entitled to 10% of the amount compensation keeping in view their age and requirement in life.

The claimants are also entitled to get interest @ 9% per annum on the said amount from the date of the award till the realization of the said amount. By now, the children must have attained the age of majority, therefore, their share need not to be kept in FDRs. All the respondents are jointly and severally held liable to pay the amount of compensation. Amount awarded by the Tribunal shall be deducted from the total compensation.

With the aforesaid modification, the present appeal stands allowed.

(FATEH DEEP SINGH)
JUDGE

26.04.2022
Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No