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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision:19.05.2022

FAO-476-2009

United India Insurance Company Ltd. ..... Appellant

Versus

Kamla and Ors. ......Respondents

FAO-2941-2009

Smt. Kamla (Since Deceased) and Anr. ..... Appellants

Versus

Radhey Shyam and Ors. ......Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gopal Mittal, Advocate
for the appellant.

Sh. Amit Singla, Advocate
for respondent No.1 and 2.

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ANIL KSHETARPAL, J.(Oral)

This order shall dispose of two connected appeals filed in order to challenge a common award passed by the Motors Accident Claims Tribunal. FAO No.476 of 2009 has been filed by the Insurance Company whereas, FAO No.2941 of 2009 has been filed by the claimants. The Motor Accident Claims Tribunal has assessed ₹2,50,400/- as amount of compensation payable to the parents on account of death of their son Anil Kumar in an automobile accident. It is the case of the claimants that their son (late Sh. Anil Kumar) was working as a Conductor on a passenger bus.

On 30.03.2005 at about 12.00 noon, Anil Kumar along with Satpal son of Wazir Singh was standing at old bus stand Barwala near the bus No.HR-39A/4287 in order to invite the passengers to load the bus when offending vehicle (Mahendra Pick up van) driven by Radhey Shyam-respondent No.1 came at a high speed and crushed Anil Kumar without blowing any horn. Radhey Shyam after causing the accident fled away from the spot. Sh. Anil Kumar on being shifted to the hospital succumbed to his injuries. The driver and the owner of the Mahendra Pick up van contested the petition alleging that the claimants have concealed the material facts and, in fact, the Mahendra Pick up van was parked in front of a shop at old bus stand Tohana road Barwala and in the meanwhile, the private bus came from the bus stand towards the Mahendra pick up van, and the bus due to being heavily packed with the passengers, the conductor was unable to get inside the bus and the driver of the bus while driving it negligently hit the bus with the parked pick up van. The Insurance Company of the Mahendra pick up vehicle also stated that Radhey Shyam was not holding a valid and effective driving licence.

In order to prove the accident, Ram Niwas son of Mange Ram, the driver of the bus appeared as PW-1 and Satpal examined as PW-2. Both of them stated that the bus was parked at the bus stand when the Mahendra pick up van came in a rash and negligent manner from the back side and killed the conductor of the bus Anil Kumar. The respondents examined RW-4 Rajender the alleged eyewitness, who stated that at the time of accident, he was having his tea and the accident took place due to the negligence on the part of the bus driver as the deceased was hanging outside the bus with a foot on the footrest when he hit against the stationary pick up van.

The Tribunal after examining the mechanical report of the Mahendra pick up van found that mudguard and the bumper of the Mahendra pick up van, which is on the front had suffered dents. Thus, the Court formed an opinion that the case set up by the claimants is correct. The Tribunal assessed the amount of compensation at Rs.2,50,400/-.

Heard the learned counsel representing the parties at length and with their able assistance perused the file as well as record of the Tribunal which was requisitioned.

The learned counsel representing the Insurance Company contends that the Tribunal has erred in disbelieving the version put-forth by the driver and the owner of the Mahendra pick up van. He submits that the aforesaid version has been corroborated by Rajender son of Hari Chand who appeared as RW-4. He further contends that the FIR has been lodged against the driver of the bus.

The driver of the pick up van has appeared in evidence, he admitted that he went to the hospital on the alleged date of accident but did not visit the police station. He also admitted that he was released on bail under the orders from Court and he is facing the criminal prosecution for causing the alleged accident. It is well-settled that the documentary evidence should be given preference over the oral evidence. Fortunately in this case, a mechanical report of the pick up van is available. The aforesaid mechanical report does prove that the pick up van was damaged on its front side. If the pick up van was parked and the bus came from behind, the pick up van was not in a position to suffer any kind of damage on its front side. It is only possible if the Mahendra pick up van came from behind. The Tribunal has not committed any error in ignoring the evidence of Radhey Shyam and Rajender.

Consequently, the appeal filed by the Insurance Company lacks merit.

Anil Kumar aged about 21 years lost his precious life in this automobile accident. He was unmarried. The claim petition was filed by his unfortunate parents. The Tribunal has assessed the income of the deceased @ 3200/- per month. The evidence of the claimants is supported by the driver of the bus.

Learned counsel representing the claimants submits that the Tribunal has erred in failing to award escalation and income on account of the future prospects. He submits that as per the judgment passed in ***National Insurance Co. Ltd. vs. Pranay Sethi and Ors., 2017 SCC online SC 1270.*** The income is required to be added by 40% on account of the future prospects. The Court has applied multiplier of 9, which is lesser in value. The Court has also failed to award a proper amount for the loss of parental consortium.

The Tribunal has committed an error in deducting only 1/3rd of amount for personal expenses of the deceased, which should be to the extent of 50%.

Keeping in view the amount is reassessed as under:

Sr.No	Head	Amount Assessed by the High Court
1.	Income	₹3,200/- per month
2.	Future prospects @ 40% Monthly dependency	₹3,200 x 40% = ₹1,280 ₹3,200+1,280 = ₹4,480 per month
3.	Deduction @ 1/2nd	₹4,480 x 1/2nd = ₹2,240 (₹4,480 – ₹2,240 = ₹2,240)
4.	Annual dependency	₹2,240 x 12 = ₹26,880/-
5.	Multiplier @ 18	₹22,880 x 18 = ₹4,83,840/-
6.	Consortium(parental consortium)	₹80,000/-
7.	Total	₹5,63,840/-

8.	Funderal expenses and loss of estate	₹30,000/-
9.	Total	₹5,93,840/-
10.	Compensation awarded by Tribunal	₹2,50,400/-
	Enhancement	₹5,93,840-₹2,50, 400 = **₹3,43,440/-**

Consequently, the appeal filed by the claimants is allowed and that of the Insurance Company is dismissed.

(ANIL KSHETARPAL)
JUDGE

19th May 2022

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