IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2469 of 2012 (O&M)

Date of decision: 25th April, 2022

Nirmal Rani

… Appellant

Versus

Lakhwinder Singh & others

… Respondents

CORAM: HON’BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Vinod Gupta, Advocate for respondents No.1 and 2.

Mr. Gopal Mittal, Advocate for respondent No.3.

<u>FATEH DEEP SINGH, J.</u>

The Court of learned Motor Accident Claims Tribunal, Hoshiarpur vide Award dated 11.01.2012 had disposed off and allowed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short, ‘the Act’) of Nirmal Rani and allowed compensation to her to the tune of ₹ 1,84,800/- along with interest @ 8% p.a. from the date of petition till realization of the amount. Aggrieved over these findings, the widowed mother who claims herself to be aged around 56 years had through this invocation sought enhancement of the compensation for the unfortunate death of her unmarried son Baldev Raj then aged around 29 years.

Heard learned counsel for the parties and perused the records of the case. The contentions of the claimant mother, present appellant, that the deceased was working as a Medical Representative earning ₹ 8,400/- per month and had died in a motor vehicular accident when his Scooter bearing registration No.PB07J-4892 (for short, 'the ill fated scooter') was struck by the offending truck bearing registration No.HR38E-7463 while being driven in rash and negligent manner.

In the pleadings, the driver and owner respondents No.1 and 2 have admitted the incident while the insurance company respondent No.3 denied for want of knowledge but claimed that the offending vehicle was not having a valid route permit nor the driver was having a valid and effective driving license. The Tribunal framed the following issues:-

1. Whether Baldev Raj died in an accident caused by respondent No.1 Lakhwinder Singh while driving truck bearing No.HR38-E-7463 rashly and negligently? OPA
2. Whether the claimant is entitled for the amount? If so to what amount and from whom? OPA
3. Whether the respondent No.1 was not holding valid and effective driving licence at the time of alleged accident? OPR-3

4. Whether the owner and Insurance Company of the Scooter No.PB-07-J-4892 are necessary parties as alleged? OPR-3
5. Whether the Insurance Company is not liable to pay the compensation as the vehicle was being driven against the provisions of Motor Vehicles Act and Insurance policy as alleged in preliminary objection No.5? OPR-3
6. Relief.

The claimant examined herself as AW1 and sought corroboration from Naresh Kumar AW2 and Rahul Jaswal AW3 and closed the evidence. Respondents No.1 and 2 did not lead any evidence. However, respondent No.3 tendered copy of insurance policy Ex.RY and closed the evidence. That is how the present matter is before this Court.

Appreciating the submissions of Mr. Harsh Aggarwal, Advocate representing the appellant, Mr. Vinod Gupta, Advocate for respondents No.1 and 2; Mr. Gopal Mittal, Advocate for respondent No.3.

The factum of accident and its manner have never been denied in the pleadings by the driver and the owner and therefore, the findings of the Tribunal on issue No.1 based on the fact of eye-witness account of the accident Naresh Kumar AW2 and the FIR Ex.A2 irrefutably establish it so which is further corroborated from the post-mortem report Ex.A4 and the death certificate Ex.A5 and Ex.A6. There is no challenge to the findings on issue No.1 and which findings are upheld.

The onus of issues No.3 and 4 as to the documents of the owner and the driver of the offending vehicle were placed by the insurance company and though the insurance policy Ex.RY has been placed on record, there is nothing suggestive and of concrete nature proved on the record to show otherwise. Since the onus lay upon the insurance company, they have miserably failed to rebut this aspect of the matter. Therefore, findings on these issues also need to be upheld.

The primary argument that has come about is on issues No.2 and 5 over the very compensation and the liability. It is the own case of the insurance company in their submissions by virtue of Ex.PY that the vehicle at the time of accident was insured with them and therefore, the insurance company cannot run out of its obligation to pay compensation amount. As far as quantum of compensation is concerned, the deceased was aged around 29 years. To the specific query of the Court, learned counsel for the appellant could not convince by what means evidence as to the earnings of the deceased as ₹ 8400/- per month is sought to be established. The deceased admittedly was a bachelor however, without adverting on to this aspect of the matter, taking the earnings to be ₹ 8400/- per month, it comes to ₹ 280/- per day when at that point of time daily wages were to the tune of ₹ 150/- per day. Thus, the monthly earnings come to ₹ 4500/- and the annual income comes to ₹ 54,000/-. The deceased was aged around 29 years and which is not displaced. The Tribunal had applied multiplier of 7 which ought to have been 17 as per the settled position of law and the provisions of the statute and therefore, applying this multiplier of 17, compensation comes to ₹ 9,18,000/-. The deceased was a bachelor and with the passage of time, ought to have got married and therefore, dependency of the widowed mother would have undergone a decline and therefore, deduction of 1/3rd deserves to be made and therefore, total compensation comes to ₹ 6,12,000/-. Besides this, the widowed mother has lost her young son and for performance of last rites and ceremonies must have spent money besides loss of love and affection and dependency and for which under all these heads by some amount of guess-work and hypothetical calculations this Court concludes that compensation under the same comes to ₹ 2.00 lacs. The total compensation therefore, is assessed at ₹ 8,12,000/-. The rate of interest so awarded from the date of accident till the date of realization is certainly rationale and justified and need not be changed. The interim compensation or any amount of the award deposited shall be deducted from this amount accordingly. The entire amount shall go to the claimant widowed mother and which the owner, driver and the insurance company shall be jointly and severally liable to pay. The appeal stands allowed and the award stands modified in those terms.

(FATEH DEEP SINGH)
JUDGE

April 25, 2022
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No