234-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) FAO-2423-2015 (O&M)
Date of decision: 24.05.2022

Devinder Kaur and others ....Appellants

versus

Karan Singh @ Kalam Singh and others ....Respondents

2) FAO-1389-2015 (O&M)

The Oriental Insurance Company Ltd. ....Appellant

versus

Davinder Kaur and others ......Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ram Avtar , Advocate
for the appellant.

Mr. Bhupinder Singh, Advocate
for respondents No.1 to 3.

FATEH DEEP SINGH, J.

Since, the above detailed two appeals, one by the claimants and other by the Insurance Company have arisen out of common award dated 26.11.2018 of the Motor Accidents Claims Tribunal, Patiala, and, thus, to facilitate brevity, are being taken up and decided together by this common judgment.

Heard counsel for the two sides and perused the records.

On 14.01.2014, Arjun Singh (deceased) was coming to his home on a motorcycle (‘ill-fated motorcycle’) No.PB-11-AP (T)-9846 and around 06:00 PM car bearing No. PB-11-TC-7 ('the offending car') came from the opposite side being driven by respondent No.1-Karan Singh @ Kalam Singh rashly and negligently and hit the motorcycle of the deceased resulting in his death FIR No.19 dated 14.01.2014 under Section 279/304-A/427 of the Indian Penal Code was registered at Police Station Sadar, Patiala. An application seeking compensation on the grounds that claimants-Davinder Kaur, being the widow, claimant-Harmeet Kaur and Pardeep Kaur being minor daughters of the deceased were totally dependent on the deceased who owned 04 acres of land and used to earn Rs.5-6 lakhs per year besides selling milk from where, he earned Rs.2,000/- per day. It was, further pleaded that the family had to spent more than Rs.50,000/- on the last rites and ceremonies of the deceased and, thus, claimed compensation from the driver/respondent No.1-Karan Singh @ Kalam Singh, the owner of the offending car/respondent No.2-KGC Motors and insurer/respondent No.3-The Oriental Insurance Company being the insurer of the vehicle. The respondents in their reply denied absolutely any accident but accepted the fact that the offending car at the time of accident, was insured with respondent No.3 and the latter, took the plea that the driver at the time of accident, was not holding legal, valid and effective driving license.

The Tribunal has framed the following issues:-

1. Whether the deceased Arjun Singh son of Dalip Singh died in a motor vehicle accident which took place on 14.01.2014 due to rash and negligent driving of Car No. PB-11TC-7 being driven by respondent No.1? OPP.
2. Whether the claimants are entitled to claim, if so, to what amount and from whom? OPP.
3. Whether the claim petition is not maintainable? OPR
4. Whether the driver of the Car No. PB-11TC-7 was not having a valid and effective driving license at the time of accident? OPR.
5. Relief.

Claimant-Davinder Kaur testified as CW1, Sukhwinder Singh, eye-witness examined as CW-2 and Balbir Singh as CW-3. Commission agent proved earning of the deceased proved as documents Ex.C-22 to C-24.

On the other hand, driver testifies as RW-1, Gulab Singh as RW-2 from the police station and tendered documents as

Ex.RA to Ex.RD. The insurer only tendered copy of Insurance Policy as Ex.R1.

Consequent upon, passing of an award by the Tribunal, a sum of Rs.16,80,000/- along with interest @ of 7.5 % per annum from the date of filing of the present petition till the recovery of the amount. It is under these circumstances, the claimants have sought enhancement of the amount being meager and the insurer has come up trying to take the plea that the award is on the higher side.

Appreciating the submissions of the two sides, admittedly, the deceased at the time of the accident was aged around 45 years which is well elaborated in the post mortem report Ex.C-1. It is also not displaced from the J-Forms as to the annual earnings of the deceased from selling his agricultural produce. The revenue records by way of *jamabandi* Ex.C-23 to C-25 established and corroborate the fact of the ownership of the property and his earning out of it. Though, with much fanfare, counsel for the insurer has sought to argue that the land still exists even though the deceased has died and it would not be a case where the claimants are unable to earn their livelihood.

Be so as it may, in light of the arguments put forth, it needs to be kept in mind that the claimants are the widowed wife and two minor young girls and it is highly preposterous proposition that they would be cultivating the land and earning their income commensurate to what the deceased used to earn. Even though, the land might be put to lease but it is a matter of common knowledge that the claimants would not be able to drive that very benefit and what to consider that the earnings of Rs.2,000/- per day from selling of milk has also gone down the drain. More so, in these days of progressive farming, keeping in view the age of the deceased, it is not very uncommon that with modern techniques and information available, people are able to earn much more than earlier from even such a meager piece of agricultural land and the petitioner, though is a marginal farmer but it needs to be kept in mind that the Tribunal had erred in assuming that the deceased in all likelihood was earning Rs.10,000/- per month. The J-Forms Ex.C-2 to Ex.C-21 speak much on the higher side and how a deduction has come about by the Tribunal is anybody's guess. It needs to be kept in mind that Act is a welfare legislature for the betterment of the claimants and, thus, is to be given liberal construction and pragmatic approach needs to be made. Keeping in view the age of the deceased, the documents proved on the record which have remained unrebutted, it would not be unreasonable to assume that the deceased in all likelihood must be earning Rs.16,000/- per month and assuming that out of this, deceased must be spending Rs.2,000/- on his own upkeep and maintenance and must be contributing Rs.14,000/- per month for running of the household comprising of three claimants and which is a reasonable amount keeping in view the present price index of the essential commodities. Besides this, both the girls are of the age where they are supposed to have education to further progress in life and by some amount of guesswork and hypothetical calculations, the deceased must be contributing Rs.14,000/- PM and, therefore, this Court is assessing the annual income of Rs.1,68,000/- (14,000 x 12). It needs to be kept in mind the Court below has missed on the future prospects of the deceased and in view of what has been detailed and discussed above, and to prevent the repetition of the evidence, it would be appropriate to apply 25% towards the future prospects and the same comes to Rs.42,000/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.2,10,000/- (1,68,000 + 42,000).

Keeping in view the age of the deceased, the learned Tribunal had wrongly applied the multiplier of 13 when it ought to be 14, which is appropriate and the relative ages of the claimants and, therefore, the amount of compensation comes to Rs.29,40,000/- (Rs.2,10,000/- x 14).

Besides this, the family must have spent money on the last rites and ceremonies. The widow has lost her husband, the young daughters their father, the source of inspiration, protection and love and all these under various heads, this Court compounds the compensation to the tune of Rs.2,50,000/- and, therefore, total award amount comes to Rs.31,90,000/- (29,40,000 + 2,50,000).

Keeping in view that respondent No.1-Karan Singh @ Kalam Singh-Driver, respondent No.2-KGC Motors-Owner and respondent No.3-The Oriental Insurance Company are jointly and severally held liable to pay compensation which shall be equally distributed amongst the claimants in equal shares. Besides this, they shall be entitled to interest @ 9% which is reasonable at the time of award was passed and does not need to be disturbed. Compensation, if any, paid shall be adjusted against this amount. By now the minors must have attained majority and therefore there is no need to order their shares to be put by way of FDRs.

In light of the foregoing findings, the appeal bearing No. FAO-2423-2015 titled as '*Devinder Kaur and others Karan Singh @ Kalam Singh and others*' is hereby allowed whereas, there being no merits in the appeal bearing No. FAO-1389-2015 titled as '*The Oriental Insurance Company Ltd. Versus Davinder Kaur and others'* is hereby stands dismissed.

(FATEH DEEP SINGH)
JUDGE

24.05.2022
Neha

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