IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7947-2016(O&M)
Date of decision:-20.12.2022

Chand Kaur and others

...Appellants

Versus

Surender and another

...Respondents

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

Present: Mr.S.K. Tripathi, Advocate
for the appellants.

Mr.Karan Singh, Advocate
for respondent No.1.

Mr.Pardeep Kumar, Advocate
for respondent No.2.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on 7.11.2015 Rajpal son of Dharam Singh, resident of village Bas Lambi, Tehsil & District Gurugram driving his car bearing registration No.HR76-A-2273 was going to his village along with his brother-in-law - Vikas Yadav; when the car had reached near Jamalpur Chowk, then a canter bearing registration No.HR-38-H-5363 (hereinafter referred to as the offending vehicle) being driven by its driver respondent No.1 Surender in a rash and negligent manner came from the side of Jamalpur Chowk and hit the car of the deceased; resultantly Rajpal suffered multiple and grievous injuries all over his body; he was removed to Sunrise Hospital, Gurugram from

where he was referred to Artemis Hospital, however, he succumbed to the injuries on 20.11.2015. Formal FIR was registered against canter driver Surender for the offences under Sections 279, 337, 338, 304-A IPC. He has been challaned also as well as charge-sheeted for these offences.

2. The legal representatives of deceased, namely, his grandmother – Chand Kaur, wife - Munesh, minor daughter – Priya and minor son – Kuldeep had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the MV Act) against the respondents i.e. Surender – driver-cum-owner as well as L&T Insurance Company, Mumbai.

3. Notice of the claim petition was given to respondents, who put in appearance and filed written statements contesting the claim petition. Issues on merits were framed. The parties were afforded effective opportunities to lead evidence in support of their respective claims.

4. After hearing arguments, Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as the Tribunal) vide award dated 16.8.2016 accepted the claim petition and granted compensation of Rs.8,89,054/- to the claimants, payable by both the respondents jointly and severally with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

5. This award left the claimants aggrieved and they have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to the claimants.

6. Notice of the appeal was given to respondents, who put in appearance through counsel.

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

8. Learned counsel for the appellants has contended that the Tribunal fell in error in considering the income of the deceased to be Rs.6,000/- per month; he was a man of means earning Rs.20,000/- per month from the avocation of agriculture; the deceased was having three motorcycles bearing registration Nos.HR-76-2559, HR-76-5537 and HR76A-8389 and a car having registration No.HR76-A-2273; when the matter was referred to Daily Lok Adalat, there counsel for the appellants had produced all the relevant documents with regard to ownership of deceased with respect to three motorcycles and a car as well as two sale deeds of agricultural land, which has been purchased by deceased from his own income as Ex.P24 to Ex.P30; the deceased has got his car financed from Mahindra and Mahindra Finance but had repaid all the installments and NOC had been issued in his favour.

9. Whereas learned counsel for the respondent – insurance company has submitted that the income of the deceased taken is proper and adequate.

10. After considering the rival contentions, I find merit in the submissions made by learned counsel for the appellants/claimants that Tribunal fell in error in considering the income of the deceased to be Rs.6,000/- per month only, which is a very meagre amount. The Tribunal has not considered the evidence produced by the claimants in proper perspective. The deceased was a middle age person having age of 42 years and at the time of accident, he was driving his own car. The claimants

have given registration numbers of the motorcycles and the car placing record the registration certificates of those vehicles. It has also come on record that deceased was an agriculturist. A person engaged in avocation of agriculture, who can afford to maintain three motorcycles and a car cannot do so with monthly income of Rs.6,000/-. As per the case of the claimants, the deceased was the only earning member of the family comprising his grandmother, wife and two minor children. Therefore, the income taken by the Tribunal as Rs.6,000/- per month was on lower side and in my view, it would be proper and appropriate to take monthly income of the deceased to be Rs.10,000/-.

11. Further the Tribunal has not awarded any amount towards future prospects. The Tribunal has considered the age of deceased to be 42 years. In terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when the deceased was between the age of 40 to 50 years, addition of 25% is to be made on the established income towards future prospects. Doing that the monthly income of the deceased comes out to Rs.12,500/-(10000 + 2500).

12. Keeping in view the number of dependent family members of the deceased, deduction to the extent of 1/3rd is to be made to the income of the deceased as personal expenses. Doing that, the monthly dependency of the claimants comes out to Rs.8334 (12500 – 4166) and annual dependency comes out to Rs. 8334 x 12 = Rs.1,00,008/-.

13. The Tribunal has used multiplier of 14, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 1,00,008 x 14 = 14,00,112/-.

14. Under the conventional heads, the Tribunal has awarded Rs.25,000/- towards funeral expenses, further awarded to Rs.92,054 as medical expenses and Rs.1,00,000/ to petitioner No.2 Smt.Munesh, who is widow of deceased as consortium amount.

15. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

16. Doing that the compensation comes out to be Rs.15,90,112/- (14,00,112+40000+40000+40000+40000+15000+15000).

17. In this way, the enhanced amount comes out to Rs.7,01,058/- (15,90,112 – 8,89,054).

18. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.7,01,058/-. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. The other terms and conditions given in the relief clause regarding disbursement of the compensation amount shall apply to the enhanced amount as well.

19. With such modification, the appeal is allowed partly with costs.

20.12.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No