IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4763 of 2017 (O&M)
Date of decision: 15.09.2022

New India Assurance Company Ltd. ..Appellant

Versus

Shivit Bansal and others ..Respondents

FAO-7493 of 2017 (O&M)

Shivit Bansal and another ..Appellants

Versus

Vinod Kumar and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Viraj Gandhi, Advocate, and
Mr. Adarsh Dubey, Advocate
for the appellant (in FAO No.7493 of 2017)
for respondent no.1 and 2 (in FAO-4763 of 2017)

Mr. Rahul Pathania, Advocate,
for the appellant-New India Assurance Company

Mr. Jagjit Singh, Advocate
for Mr. Gaurav Jain, Advocate
for respondent no.10 (in FAO-4763-2017)

Mr. Harsh Vardhan Shehrawat, AAG, Haryana
Mr. Jaspal S. Pannu, AAG, Haryana
for respondent no.4 to 6 (in FAO-4763-2017) and
for respondent no.2 to 4 (in FAO-7493-2017)

ANIL KSHETARPAL, J(Oral)

This order shall dispose of two connected appeals arising from a common award passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal').

The correctness of the findings of the Tribunal with regard to accident, the involvement of the vehicles, the manner in which the accident took place and the findings with regard to rash and negligent driving are not being questioned in the present appeal.

FAO No.4763 of 2017 has been filed by the Insurance Compnay, whereas FAO No.7493 of 2017 has been filed by the claimants with a prayer to modify the award. The Tribunal has held that the claimants shall be entitled to Rs.63,78,084/- as compensation along with interest @ 9% per annum from the date of institution of the petition till its realization.

Late Sh. Vipin Gupta, lost his precious life on 31.07.2015, in an automobile accident. Initially, he was working with the Parabolic Drugs Limited. He was drawing a good salary of Rs.2,50,000/- per month. However, due to crisis in the Parabolic Drugs Limited, late Sh. Vipin Gupta was permitted by the company to take up a part time assignment with the Ashoka University. Late Sh. Vipin Gupta gradually started getting reduced income from the Parabolic Drugs Limited, whereas he was drawing a regular salary of Rs.60,000/- from the Ashoka University. As per his income tax return for the previous year 2013-2014, he earned annual income of Rs.10,05,764/-. The Tribunal has assessed the income of the deceased @ Rs.85,460/- per month.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book and the record of the Tribunal which was requisitioned.

The learned counsel representing the Insurance Company claims that late Sh. Vipin Gupta was contributory negligent as he wanted to board the stage carriage bus when it was near the exit gate of the bus stand. He submits that the driver of the bus has appeared in evidence and stated that he did not notice that a passenger wanted to board the bus.

On the other hand, the learned counsel representing the claimants while drawing the attention of the Court to the deposition of Head Constable Ramesh Kumar submits that the findings of the Tribunal with regard to the negligence of the driver of the bus is correct.

HC Ramesh Kumar was posted at the bus stand. He is an independent person. He had seen the accident. Undoubtedly, late Sh. Vipin Gupta tried to board the bus near the place which was close to the exit gate of the bus stand, however, the driver of the bus normally allows the passengers to board the bus particularly when they are within the premises of the bus stand. On that count itself, it would not be appropriate to record a finding that late Sh. Vipin Gupta was contributory negligent. Moreover, on the preponderance of probabilities the Tribunal has recorded a finding of fact which in absence of perversity cannot be interfered with.

On the other hand, the learned counsel representing the claimants, submits that the Tribunal has erred while appreciating the evidence. He submits that as per the income tax returns as well as the Pan Card, late Sh. Vipin Gupta was born on 15.04.1961. However, in one of the income tax returns, he was reflected to be born in the year 1959. he submits that at the relevant point of time, the income tax returns were being uploaded manually and therefore, there could have been a typographical mistake while filing the tax return particularly when the Pan Card itself shows that late Sh. Vipin Gupta was born on 15.04.1961.

There is only one income tax return where late Sh. Vipin Gupta has been reflected to be born on 15.04.1959, whereas the remaining income tax returns as well as Pan Card show that late Sh. Vipin Gupta was born on 15.04.1961. Hence, the Tribunal has erred on that count.

Consequently, after considering that late Sh. Vipin Gupta was born on 15.04.1961, his age at the time of death would be 54 years and 3 months. The appropriate multiplier would be 12 and not 9.

However, the Tribunal has erred in assessing Rs.2,25,000/- payable under the conventional heads. Late Sh. Vipin Gupta left behind two sons. Therefore, each one of them would be entitled to Rs.40,000/- as the loss of parental consortium. Apart from that, the claimants shall be entitled to Rs.30,000/- towards the loss of estate and funeral expenses.

Hence, the amount of compensation is re-worked as under:-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Monthly income assessed	Rs.85460-00	Rs.85460-00
Add Future Prospects 15% Total Income per month -Deduction	NIL (2/3) Rs.56973-00	Rs.12819 (85460+12819=98279-00) (2/3) Rs.65519-00
Annual dependency	Rs.56973x12=683676-00	Rs.65519x12=786232-00
Multiplier	Rs.683676x9=6153084-00	Rs. 786232x12=9434784-00
Conventional Heads -Loss of estate -Funeral Expenses -Filial Consortium -Loss of love & affection -Total compensation	 Rs.1,00,000-00 Rs.25,000-00 NIL Rs.1,00,000-00 Rs.63,78,084-00	 Rs.15,000-00 Rs.15,000-00 Rs.40,000x2=80,000-00 NIL Rs.9434784+1,10,000 = 95,44,784-00
Already awarded by Motor Accident Claims Tribunal	Rs.63,78,084-00	Rs.95,44,784-00

Compensation Awarded by the High Court :Rs.95,44,784-00

(-) Compensation Awarded by the MACT :Rs.63,78,084-00

Enhanced Compensation :Rs.31,66,500-00

With these modifications, both the appeals are disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

September 15, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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