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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-8009-2017 (O&M)
DATE OF ORDER: 15.12.2022

National Insurance Co. Ltd.

.....Appellant

Vs.

Satya and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. S.S. Sidhu, Advocate for the appellant.

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

Mr. P.S. Guliani, Advocate for
respondents No.4 and 5.

Nidhi Gupta, J.

This is an appeal filed by the Insurance Company against Award dated 09.08.2017 passed by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as "the Tribunal") whereby the claim petition filed by the respondents No.1 to 3 herein under Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") was allowed and a total compensation of Rs.6,11,000/- was awarded to them.

Brief facts of the case are that on 31.07.2016, Mohan Singh/deceased was going from village Choti Balial to Bhawanigarh on his motorcycle make Hero bearing registration No.PB-13AE-7584 when a scooty Mahindra Gusto bearing registration No.PB-13AT-5472 (hereinafter referred to as "the offending vehicle") being driven by respondent No.1 in a rash and negligent manner came from the side of Bhawanigarh and

struck into the motorcycle of the deceased due to which he along with his motorcycle fell down on the road and received grievous injuries on his head and his motorcycle was also badly damaged. Eyewitness-Jagga Singh with the help of one Satpal Singh moved Mohan Singh to Civil Hospital, Bhawanigarh from where he was referred to Rajindra Hospital, Patiala for treatment as he had suffered serious injuries. At Rajindra Hospital, Patiala, Mohan Singh was declared brought dead. On the statement of eyewitness-Jagga Singh, FIR No.109 dated 01.08.2016 was registered at Police Station Bhawanigarh against respondent No.1 under Sections 279, 427 and 304-A IPC.

The learned Tribunal on the basis of evidence, pleadings and materials placed on record before it came to the conclusion that the deceased had died in the said motor vehicular accident on 31.07.2016 due to the rash and negligent driving of respondent No.1- Kuljinder Singh, driver of Mahindra Gusto bearing registration No.PB-13AT-5472. It was the pleaded case of the respondents-claimants before the learned Tribunal that the deceased was getting contracts regarding providing of labourers to commission agents in paddy and wheat seasons but as no substantive evidence was led by them in this regard, accordingly, the learned Tribunal assessed the income of the deceased to be Rs.6000/- per month and made a deduction of 1/4 out of his income on account of personal expenses, therefore, taking the income of the deceased to be Rs.4,500/- per month and annual dependency to be Rs.54,000/-; age of the deceased was taken to be 61 years and multiplier of 9 was applied and therefore, compensation payable to the claimants was worked out to

Rs.4,86,000/-. Further, Rs.1,00,000/- was awarded by way of loss of consortium to widow of the deceased/claimant No.1 (respondent No.1 herein); Rs. 25,000/- was awarded by way of funeral expenses, coming to a total compensation of Rs.6,11,000/-. Further, interest at the rate of 7.5% was awarded from the date of filing the claim petition till date of realization. Respondents were held jointly and severally liable to pay the compensation.

Learned counsel for the appellant-Insurance Company submits that he is assailing the above said Award primarily on account of three grounds; a) vehicle mentioned in the FIR is different from the one mentioned in the claim petition; b) the quantum of compensation awarded; and c) the multiplier applied.

Learned counsel in support of his first submission very painstakingly took me through the record to demonstrate that in the FIR (Annexure A1), CW1-Jagga Singh eyewitness, in his statement dated 31.07.2016 on basis of which FIR was registered, has stated that *"When my father Mohan Singh reached the bridge on the distributory about 100 yards from Bhwanigarh Road in the area of village Rampura at about 7.00 PM, then a Scooty No.PB-13AF-5472 make Mahendra driving rashly and negligently at a fast speed came and hit into the motorcycle of my father Mohan Singh in my presence."* Learned counsel then refers to the claim petition to submit that on the contrary in the claim petition, the number of the offending vehicle is given as PB-13AT-5472. In support of this contention, learned counsel refers to other record including the

verification of RC particulars Annexure A3 and statement of CW1-JaggaSingh.

In support of the second contention regarding the quantum of compensation, learned counsel submits that as there were only three claimants, the same being the widow of the deceased and two sons of the deceased, the learned Tribunal should have applied a deduction of 1/3 and not 1/4.

Thirdly, Id. Counsel submits that multiplier of 9 was incorrectly applied as the deceased being 61 years of age, the Tribunal should have applied multiplier of 7. Learned counsel refers to Annexure A5 which is the statement of respondent No.1/widow of the deceased CW2 Satya aged 60 years, wherein she has stated that *"I do not know how much Mohan Singh was elder to me then said Mohan Singh was two years elder to me. Today, I brought my voter card according to which I am 60 years and my date of birth is 1.5.1957."* It is submitted that the date of the statement is 09.05.2017 and accordingly, on the date of accident i.e. 31.07.2016, the age of the deceased would be about 61-62 years, as per the said statement.

In response, learned counsel for the respondents No.1 to 3/claimants submits that the error in the registration number of the offending vehicle is merely a typographical error as a perusal of the complete record shows that the offending vehicle has been referred to as Scooty everywhere and the number has also been taken as PB-13AT-5472 and that it is only in the FIR that it has been incorrectly mentioned as PB-

13AF-5472. It is further stated that the respondent No.1-widow of the deceased is an illiterate woman and she had given an approximation of her age to be 60 years and therefore, her statement being of 09.05.2017 and the date of accident being one year prior to that, the age of the deceased is actually made to be 59 years and therefore, the multiplier has been correctly applied. It is further submitted that no consortium has been awarded to the claimants No.2 and 3, the sons of the deceased.

I have heard learned counsel for the parties.

I find merit in submissions made on behalf of the respondents-claimants. A perusal of the record reveals that the offending vehicle has everywhere been mentioned as Scooty make Mahindra Gusto bearing registration No.PB-13AT-5472. It is understandable that at the time of making statement on the basis of which FIR was registered, eyewitness CW1-Jagga Singh, may have made human error in mentioning registration number of offending vehicle as PB-13AF-5472 instead of PB-13AT-5472. Moreover, it is only in the FIR Exhibit C1 that the number of the offending vehicle is incorrectly mentioned; whereas all over the record it is referred to by the correct number. Moreover, CW1-Jagga Singh in his affidavit CW1/A has also clarified that:

“I have studied upto 5th class. I signed any document after reading it and understanding it. My statement is recorded by the police and I signed the same after reading it and admitting it correct. It is correct that in the FIR the number of the offending vehicle is mentioned as PB-13AF-5472. I came to know that the offending vehicle number is mentioned as PB-13AF-5472 after reaching the courts volunteered. I got the vehicle number PB-13AT-5472 mentioned. I do not know how the police mentioned it wrongly in the statement. I gave an application for the correction of the number of the offending vehicle to the police which was given to Gurmail Singh ASI, about a month back but I do not kept the copy of that application.”

Besides the above clarification, in my considered opinion, even assuming there was an error on the part of CW1-Jagga Singh in mentioning the incorrect number of the offending vehicle in his statement to the police, it is understandable that the same would be due to the recent trauma he would have suffered on seeing the death of his father i.e. deceased Mohan Singh in the accident. As such, this contention of the appellant is rejected.

Further, it is also not in dispute that respondent No.1 is an illiterate woman and had recorded her statement on 09.05.2017 wherein in her cross-examination, she had stated that she was 60 years of age and her date of birth was 01.05.1957 and that the deceased was two years elder to her. Even accepting the same to be true, the date of accident is 31.07.2016, therefore, it is clear that the deceased was 59-60 year-old at the time of death. Accordingly, I find no error in the Award and the same being a beneficial legislation, I hold that the multiplier of 9 has been correctly applied.

I accept the appellant's contention that in view of the fact that there are three claimants, deduction of $\frac{1}{3}$ ought to have been made and not $\frac{1}{4}$. I also direct that Rs.80,000/- be awarded as consortium to the two sons of the deceased i.e. respondents No.2 and 3 herein. The Id. Tribunal has already awarded Rs.1,00,000/- to widow of the deceased towards loss of consortium.

Accordingly, keeping in view the above facts, the compensation admissible to the respondents is re-worked as follows:-

Income	Rs.6,000/- per month
Deduction 1/3	Rs. 2,000/-
Monthly Income	Rs.4,000/-
Loss of dependency	Rs.4,000x 12 x 9 = Rs. 4,32,000/-
Compensation under conventional head as per Pranay Sethi's case	Rs. 70,000/-
Filial compensation to 2 children @ Rs.40,000/- each	Rs. 80,000/-
Total compensation	Rs. 5,82,000/-

Accordingly, the present appeal stands partly allowed in the above terms. Ratio of apportionment and manner of disbursement of the compensation amongst the claimants, as well as the rate of interest thereupon, as determined by the Tribunal shall remain the same. Pending applications, if any, also stand disposed of.

15.12.2022

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No