IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3645-2002(O&M)
Date of decision:-16.1.2023

Smt.Lali and others

...Appellants

Versus

Nihal Singh and others

...Respondents

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

Present: Ms.Shaveta Sanghi, Advocate for
Mr.Aditya Sanghi, Advocate
for the appellants.

Mr.R.K. Bashamboo, Advocate
for respondent No.3.

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H.S. MADAAN, J.

1. Petitioners/claimants Smt.Lali – widow, Birender and Daya Ram – minor sons and Ms.Poonam – minor daughter of Babu Lal, an unfortunate victim of a road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act 1988(hereinafter referred to as the Act) before Motor Accidents Claims Tribunal, Narnaul (hereinafter referred to as the Tribunal) against Nihal Singh – driver, Raj Kumar – owner and Oriental Insurance Company Ltd. Fatehabad – insurer of Tata-608 bearing No.RJ-31G/1443 (hereinafter referred to as the offending vehicle), claiming compensation of Rs.25 lakhs. In the claim petition, the petitioners impleaded Smt.Sunita, a married daughter of Babu Lal as proforma respondent No.4.

2. As per the case of the claimants, on 7.4.2001 while deceased Babu Lal along with his brother Hari Ram were returning to their village from Narnaul on bicycles with deceased going ahead of Hari Ram at about 5:30/6:00 p.m., while they were in the area near power house, then the offending vehicle driven in a rash and negligent manner by respondent No.1 Nihal Singh came from behind and hit the bicycle of deceased, resultantly, he got crushed under front wheel of the offending vehicle, although he was taken to Civil Hospital, Narnaul but he was declared brought dead.

Formal FIR with regard to the accident was recorded on the basis of statement of Hari Ram. The claimants had brought the claim petition in question contending that the deceased was working as Naib Sadar Kanungo in the office of Deputy Commissioner, Narnaul drawing salary of Rs.9319/- per month and the claimants were dependent upon his earnings.

3. Notice of the claim petition was given to the respondents, who put in appearance. Respondents No.1 and 2 filed joint written statement, whereas respondent No.3 came up with a separate written statement. All the three respondents contested the claim petition vehemently praying for its dismissal. Whereas proforma respondent No.4 in her separate written statement conceding the claim of the claimants stating that she has no objection, if the amount of compensation was disbursed to the claimants.

4. Issues on merits were framed. The parties were afforded adequate opportunities to lead their evidence in support of their respective

claims.

5. After hearing arguments, the Tribunal vide award dated 8.4.2002 accepted the claim petition and granted compensation of Rs.8,28,400/- to the claimants, payable by respondents No.1 to 3 jointly and severally with interest @ 9% per annum from the date of filing of the claim petition till realization.

6. 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.

7. Notice of the appeal was given to respondent No.3 – insurance company, which put in appearance through counsel.

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

9. Learned counsel for the appellants has confined her arguments on three points, firstly with regard to non-addition of future prospects in the income of the deceased; secondly deduction to the extent of 1/3rd having wrongly been made towards personal and living expenses of the deceased when considering the number of the dependent family members, it should have been 1/4th and thirdly with regard to compensation under the head loss of consortium having been awarded to petitioner No.1 only and that too on lower side.

10. Learned counsel for respondent No.3 – insurance company in all fairness has conceded these points stating that as per law, the needful is required to be done by way of modification in the impugned award.

11. The Tribunal had considered the date of birth of the deceased

to be 12.3.1950 as per the matriculation certificate and his age on the date of accident as 51 years. His occupation was found to be that of Naib Sadar Kanungo in the office of Deputy Commissioner, Narnaul getting total salary of Rs.9,319/- per month including all the emoluments. In terms of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when the deceased was more than 50 years, addition of 15% is to be made on the established income towards future prospects. Doing that the monthly income of the deceased comes out to Rs.10,716/-(9319 + 1397).

12. Keeping in view the number of dependent family members of the deceased being four, deduction to the extent of 1/4th 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.8037 (10,716 – 2679) and annual dependency comes out to Rs. 8037 x 12 = Rs.96444/-.

13. The Tribunal has used multiplier of 11, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 96444 x 11 = 10,60,884/-.

14. Under the conventional heads, the Tribunal has awarded Rs.5,000/- towards funeral expenses and Rs.5,000/ to petitioner No.1 Smt.Lali, 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.12,50,884/- (10,60,884+40000+40000+40000+40000+15000+15000).

17. In this way, the enhanced amount comes out to Rs.4,22,484/- (12,50,884 – 828400).

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.4,22,484 /-. The apportionment and manner of payment amongst claimants shall remain the same as directed in the impugned award except if the minor claimants have attained majority, subject to their furnishing proof in that regard their shares be released to them directly instead of depositing those in the form of FDRs with some nationalized bank.

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

16.1.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No