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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1168-2002

Pronounced on:- 16.10.2023**Kapoor Singh and another**

...Appellants

Versus

Kulwant Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Bahadur Singh, Advocate
and Ms. Rajni, Advocate
for the appellants.

Mr. Neeraj Khanna, Advocate
for respondent No. 3 - Insurance Company.

AMARJOT BHATTI, J.

1. The appellants/claimants – Kapoor Singh and Khajani have filed the present appeal for enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Bhiwani vide impugned Award dated 23.10.2001 vide which the claimants have been awarded compensation to the tune of Rs. 55,000/- along with interest at the rate of 9% per annum against the respondents No. 1, 2 and 3 along with counsel fee, from the date of the filing of claim application till realization, as detailed therein.

2. The facts of the case are that the appellants Kapoor Singh and his wife Khajani filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of their son Jaswant Singh in a motor vehicular accident. As per the facts of the

case, on the fateful day of 14.12.1998, Jaswant Singh was going in Truck bearing Registration No. HR-38-7227, in which he was working as a Conductor. The said truck was driven by Kulwant Singh – respondent No. 1. They were going on Delhi-Jaipur road. When they reached at the turn of Nawalpura within the jurisdiction of Police Station Manoharpura, one Truck bearing Registration No. RJ-14G-4711 came from the opposite side. Both the trucks were going at a high speed and they lost control over their vehicles, as a result the accident took place in which Jaswant Singh suffered serious injuries and ultimately died. The claimants alleged that their son was getting salary of Rs. 5,000/- per month. They have suffered great loss on account of his untimely death and claimed compensation of Rs. 15 lacs along with interest.

3. The respondents No. 1, 2 and 4 were *exparte* and the case was contested by respondent No. 3 taking preliminary objections as well as denying the claim of the claimants. It was alleged that claim petition was filed in collusion with the respondents. The profession of the deceased, his income and claim for compensation by the claimants was also denied.

The respondent No. 5 also denied the claim petition by filing written statement. The accident, income of the deceased victim were also denied. It was alleged that accident had taken place due to the negligence of respondent No. 1.

The respondent No. 6 the other insurance company also contested the claim application by filing written statement taking preliminary objections. It was alleged that claim petition against the insurance company was not maintainable. The truck bearing No. RJ-14G-4711 was not insured with their insurance company. The other facts mentioned in the claim application regarding accident as well as claim of

compensation were also denied.

4. From the pleadings of the parties, following issues were framed by the Tribunal :-

(1) Whether the accident took place on 14.12.1998 was because of rash and negligent driving of respondent No. 1 while driving the truck bearing No. HR-38-7227? If so, its effect? OPP

(2) Whether petitioners are entitled to receive compensation. If so, how much and from whom?

OPP

(3) Whether the petition is not maintainable in the present form? OPR

(4) Whether respondent No. 1 was not having valid and effective driving license on the date of accident if so, its effect? OPR

(5) Relief.

5. In order to prove the claim petition, the petitioner/claimant No. 1 Kapoor Singh himself stepped into the witness box as PW-1 and reiterated the averments mentioned in the claim application. The petitioners/claimants also examined Sandeep PW-2. The petitioner also produced document i.e. FIR as Ex.PA.

6. In order to rebut the case of the petitioners/claimants, the respondents did not examine any witness.

7. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the claimants was allowed by passing impugned Award dated 23.10.2001 and the claimants were granted compensation of Rs. 55,000/- along with interest @ 9% per annum from the date of claim application till realization along with counsel fee, against respondents No. 1 to 3. Since, the vehicle was insured with respondent

No.3 National Insurance Company Limited, therefore, the insurance

company was directed to make the payment of compensation. Feeling aggrieved of this Award, the present appeal has been filed by the appellants/claimants seeking enhancement of compensation.

8. I have heard the arguments advanced by learned counsel for the appellants/claimants and learned counsel for insurance company. In this case, the trial Court record could not be received as the file was destroyed in fire incident. Some of the file was reconstructed in which the grounds of appeal, copy of Award passed by the learned Motor Accident Claims Tribunal, Bhiwani was received. The learned counsel for appellants/claimants as well as learned counsel for insurance company confirmed that the only matter in controversy is regarding quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Bhiwani. Therefore, the present appeal can be decided even without the record of trial Court.

The learned counsel for the appellants/claimants raised the issue that in this case the compensation awarded by the Tribunal was not rightly assessed. The learned Motor Accident Claims Tribunal, Bhiwani wrongly assessed the annual income of late Jaswant Singh as Rs. 15,000/- and thereafter, 1/3rd income was deducted towards personal expenditure. Future prospects of late Jaswant Singh were not considered. The multiplier was applied as per the age of the parents. Meager compensation was awarded towards funeral expenditure as well as loss of estate. The learned Motor Accident Claims Tribunal, Bhiwani awarded compensation of Rs. 54,500/- (round figure Rs. 55,000/-) in favour of the claimants with interest @ 9% per annum. Therefore, the compensation awarded by the learned Motor Accident Claims Tribunal, Bhiwani vide Award dated 23.10.2001 may kindly be modified and enhanced amount of

compensation be awarded in their favour.

9. On the other hand, the learned counsel for insurance company has filed his own calculation of compensation where the notional income of late Jaswant Singh was taken as Rs. 1500/-. The learned counsel for insurance company conceded that the income is to be assessed with 40% future prospects. Thereafter, 1/2 income is to be deducted towards personal expenditure and by applying multiplier of 18, the compensation can be recalculated. The insurance company further conceded that the appellants/claimants are also entitled to compensation under conventional heads as provided in the authority cited in **2009 ACJ 1298 Supreme Court of India**, case titled "***Smt. Sarla Verma and others Vs Delhi Transport Corporation and another***". As per the calculation chart, the insurance company claimed that the appellants/claimants can be granted compensation of Rs. 2,81,800/- with interest @ 7.5% per annum over and above the compensation awarded by the Tribunal.

10. I have considered the arguments and have gone through the record. The perusal of impugned Award passed by the learned Motor Accident Claims Tribunal, Bhiwani dated 23.10.2001 clearly shows that the compensation awarded by the Tribunal is meager and inadequate. The multiplier has been applied according to the age of the parents. No future prospects have been assessed towards the income of the deceased. Therefore, considering these facts the compensation awarded by the learned Motor Accident Claims Tribunal, Bhiwani is re-calculated by considering his income as per minimum wages for unskilled workers in Haryana in the year 1998-99. The monthly income is assumed as Rs.1900/-. It was alleged that he was working as a conductor but there is no proof regarding his salary. Therefore, by considering his income as

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Rs.1900/- per month, 40% increase in income is Rs. 760/- and the monthly income is taken as Rs. 2,660/- and the annual income comes out to be Rs.31,920/-. Since the deceased Jaswant Singh was unmarried 25 years boy, therefore, 1/2 income is deducted towards personal expenditure and the annual dependency of the parents comes out to be Rs. 15,960/- and by applying multiplier of 18, the amount of compensation comes out to be Rs.2,87,280/-. Both the claimants are granted Rs. 40,000/- each towards loss of filial consortium, Rs. 15,000/- towards funeral expenditure and Rs. 15,000/- towards loss to Estate. Therefore, the total amount of compensation comes out to be Rs. 3,97,280/-, which both the appellants/claimants are entitled to receive in equal shares. As referred above, the learned Motor Accident Claims Tribunal, Bhiwani had already granted Rs. 55,000/- as compensation which is liable to be adjusted from the aforesaid amount, if already deposited, and the appellants are entitled to receive the balance amount of Rs. 3,42,280/- in terms of the Award dated 23.10.2001. The appellants are entitled to receive the enhanced amount of compensation with interest @ 9% per annum from the date of filing of present appeal till realization of the amount.

With this observation, the appeal preferred by the appellants/claimants is accepted and the impugned Award dated 23.10.2001 passed by learned Motor Accident Claims Tribunal, Bhiwani stands modified.

Pending application(s), if any, also stand(s) disposed of.

16.10.2023

lalit

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes
Yes/No