IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO-949-1991 (O&M)
Date of decision: 18.12.2023

Sanjay Rishi

....Appellant

Versus

Tara Chand and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present : Mr. Dhruv Walia, Legal Aid Counsel for the appellant

Mr. Deepak Suri, Advocate for respondent No.3-Insurance Company

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AMAN CHAUDHARY. J.

1. The present appeal has been filed by the claimant-appellants for enhancement of the compensation amount awarded by the learned Motor Accident Claims Tribunal, Faridabad (for short 'the Tribunal') vide award dated 27.02.1991, on account of death of Pushpa Bhardwaj in a motor vehicular accident.

2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 32 years, learned counsel for the parties have no objection, if the same is decided on the basis of the available record.

3. Learned counsel contends that the learned Tribunal has erred in holding the accident to be on part of both the drivers in the ratio of 60:40 (truck and car), as the driver of the truck was without due caution trying to reverse it and thus, he was totally negligent. The deceased, 57 years old at the time of accident, was running a business of Interior Decorator and cooking school, wherefrom she

was earning Rs.4,000/- per month. However, the Tribunal without considering the evidence on record, granted only a lump sum amount of Rs.50,000/-.

4. On the other hand, learned counsel for the Insurance Company submits that the compensation was awarded to the claimant-appellant after appreciating the evidence led by the claimant-appellants, thus, the same does not deserve to be enhanced.

5. Heard learned counsel on either side and perused the case file.

6. There is no dispute that the death of the deceased-Pushpa Bhardwaj, occurred in a motor vehicular accident. In so far as the findings of the Tribunal regarding negligence attributed to both drivers of the car and truck and its assessment at 40:60 is concerned, the same is apparently based on conjectures and surmises. The Tribunal has fallen in grave error in not taking into consideration that in the absence of any evidence led to the effect that the truck while reversing, which was an admitted fact, had used its blinkers. In cross-examination of PW3 Ramesh Chand Sharma, the first informant as per FIR Ex.P7 had in unambiguous terms stated that the truck had suddenly started to reverse. There also being no positive averment in the written statement that the truck was stationary, it was not plausible for the driver of the Maruti car to have ever perceived such an eventuality. It was therefore that both vehicles moving in the opposite directions, one upon being reversed and the other going forward, led the Maruti car to come beneath the truck from its rear. In wake of the aforesaid, there was neither any occasion nor any cogent reason for the Tribunal to have arrived at the finding, which is nothing but absurd. As a corollary to the above, it is held that the negligence being only on part of the driver of the truck to have abruptly started to

reverse his vehicle unsignaled, the Insurance Company would be liable to pay the entire compensation.

7. Insofar as the income is concerned, the Tribunal in para 15 of the Award has noticed that considering the exemption limit for payment of income tax for the financial year 1979-80, the deceased can be said to be earning Rs.20,000/- per annum, being the partner in a firm and also income tax returns Ex.P12 to P-15. In order to move further, a gainful reference can be made to **Sarla Verma and others vs. Delhi Transport Corporation and another,** 2009(3) RCR (Civil) 77, **National Insurance Company Limited vs. Pranay Sethi and others** 2017(4) RCR (Civil) 1009, **Kirti vs. Oriental Insurance Co. Ltd.,** (2021) 2 SCC 166 and **Janabai vs. ICICI Lambord Insurance Co. Ltd.,** (2022) 10 SCC 512 and as per the law laid down therein, the appellant can be held entitled to grant of future prospects to the extent of 10% and also for the compensation under the conventional heads i.e. Rs.18,000/- for funeral expenses, Rs.18,000/- for loss of estate, and Rs.1,44,000 (48,000x3) for filial consortium to her three sons. As the deceased was 57 years of age, the multiplier of 9 should have been applied and there being three claimants, the deduction of 1/3rd ought to be made on account of personal expenses of the deceased.

8. Consequently, the total compensation comes to Rs.3,12,000/- (20,000 (annual income) + 10% (towards future prospects) – 1/3rd (deduction towards personal expenses) x 9 (multiplier) + Rs.1,80,000/- (conventional heads). Therefore, the enhanced compensation of Rs.2,62,000/-, over and above the amount of Rs.50,000/- already awarded by the Tribunal, alongwith interest at the rate of 7.5% per annum from the date of filing of the present appeal, till its

realization, shall be paid to the claimant-appellant and respondent Nos. 4 and 5 by respondent No.3- New India Assurance Company, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. Failing which, the amount shall accrue an interest as awarded by the Tribunal.

9. Modifying the award to the aforesaid extent, the present appeal is disposed of.

(AMAN CHAUDHARY)
JUDGE

18.12.2023
M.Kamra

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