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

FAO-2374-1996
Date of decision: 13.12.2023

Yash Pal Singh Malik and others
.....Appellants

versus

Smt. Reetu Goel and others
..... Respondents

RA-CR-53-2020 in
FAO-2414-1996

Reetu Goel and others
.....Appellants

versus

Yash Pal Singh Malik and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: None for appellant Nos.1 and 2.

Mr. Suvir Dewan, Advocate
for appellant No.3-Insurance Company
for review/applicant.

Mr. Rahul Noorie, Advocate for
Mr. Abhimanyu Singh, Advocate
for the respondents.

*****

<u>AMAN CHAUDHARY, J.</u>

1. Challenge in FAO-2374-1996 is by the driver, owner and the insurer of the offending vehicle, to the Award dated 21.05.1996 passed by the learned Motor Accident Claims Tribunal, Ambala (for short 'the Tribunal') vide which a sum of Rs.38,40,000/-alongwith interest @ 12% per annum, had been awarded to the claimant-respondents as compensation and the appellants, to be paid by them.

2. RA-CR-53-2020 has been filed for review of the judgment dated 12.11.2018 passed in FAO-2414-1996.

3. These are the reconstructed cases, as the original files were burnt in the fire that broke out in the concerned branch in the year 2011. Since these are pending for the last more than 27 years, the counsel for the parties have no objection, in case the same are decided on the basis of the available record.

4. Learned counsel for appellant No.3-Insurance Company states that the compensation awarded to the claimants was excessive by taking the income of the deceased as Rs.30,000/- per month. Further, there was no evidence that the deceased was having any agricultural income. As far as the review is concerned, the submission advanced is that FAO-2414-1996 that has been decided should have been alongwith the present appeal, to avoid contradictory finding. As such, the order passed in the aforesaid FAO be recalled and decided afresh.

5. Learned counsel for the claimants contends that deceased-Parveen Kumar was a businessman and also having agricultural income, therefore, the Tribunal had rightly taken the income as Rs.30,000/- per month. Moreso, the appellants did not raise this objection while the appeal in FAO-2414-1996 was being decided, which even otherwise had attained finality, SLP having been dismissed, therefore, the review is not maintainable.

6. Heard and perused.

7. The respondents/claimants had filed an appeal bearing FAO-2414-1996 for enhancement of compensation. This Court noticed the fact that the contention of the claimants that deduction should have been 1/4th being four dependents, was fairly accepted by the Insurance Company, as also was the factum of nothing being awarded under conventional heads. It is thereafter, vide

judgment dated 12.11.2018, this Court while relying on the judgments in the case **National Insurance Company vs. Pranay Sethi and other**, 2017(4) RCR (Civil) 1009 and **Magma General Insurance Company Ltd., vs. Nanu Ram @ Chuhru Ram & ors.**, SLP (Civil) 3192 of 2018, decided on 18.09.2018, amount of Rs.30,000/- was awarded towards loss of estate and funeral expenses, Rs.40,000/- towards loss of consortium to widow and another Rs.40,000/- each towards filial consortium to the two minor children and the mother. Against the aforesaid judgment SLP (Civil) No.32038 of 2019 preferred by the Insurance Company was dismissed by Hon'ble the Supreme Court vide judgment dated 19.09.2019 (Annexure RA-5).

8. With regard to taking the income of the deceased as Rs.30,000/-, the Tribunal returned the findings, in which no error can be found and moreover no plea for the same had been taken by the Insurance Company in the FAO-2414-1996 filed by the claimants for enhancement. The relevant part of the award reads thus:

> "It has also come in the statement of Smt. Ritu Goel that Rs.38,000/- fee was being paid to education the children, in a year. She produced the receipts of the Marshall School Dehradun vide Ex.P.1 and Ex.P.2 in this regard. This shows the financial standard of the family. The learned counsel appearing for the respondents urged that income tax returns were got prepared after the incident but this does not mean that the income tax return so far was false or containing any incorrect facts, even if the earlier income tax returns which though have not been placed on the record indicated income does not mean if income was less. These income tax returns are filed on the advice of the Income Tax Adviser. That does not mean that the income of the deceased was less than he claimed."

9. In wake of the aforesaid facts and circumstances of the case, when the Insurance Company had accepted the contentions raised on behalf of the

claimants and the appeal was decided in view of the law laid down, as also the SLP challenging the said judgment already stands dismissed, the present appeal does not have any merit.

10. Insofar as the review of the judgment dated 18.11.2018 is concerned, the same primarily being on the ground that the aforesaid appeal ought to have been considered along with it, is also sans merit, in light of the observations made in the foregoing paragraphs. A judgment can be open for review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review, as was held by Hon'ble the Supreme Court in **S. Madhusudhan Reddy vs. V. Narayana Reddy,** 2022 SCC OnLine SC 1034. Learned counsel has not been able to bring the review application within the ambit and scope of the above.

11. As a consequence, the appeal as well as review application are hereby dismissed.

12. Photocopy of this order be placed on the file of the connected case.

(AMAN CHAUDHARY)
JUDGE

13.12.2023
Hemant

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