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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.1336 of 1997
Date of Decision: 07.02.2023

Smt. Pushpa Rani & others

...Appellants

Versus

Sarwan Singh & others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Munish Gupta, Advocate,
for the appellants.

Service of notice upon respondent No.1
already dispensed with vide the order dated 12.01.2015.

Mr. Neeraj Khanna, Advocate,
for respondent No.2-Insurance Company.

Mr. Anurag Bansal, AAG, Punjab,
for respondents No.3 & 4.

* * * *

<u>MEENAKSHI I. MEHTA, J. (ORAL)</u>

Feeling aggrieved by the Award dated 21.03.1997 as passed by learned Motor Accident Claims Tribunal, Ludhiana (for short 'the Tribunal), whereby the petition filed by the appellants-claimants (here-in-after to be referred as 'the claimants') for seeking compensation on account of the death of Sub Inspector Ramesh Lal in a motor vehicular accident, has been dismissed, they (claimants) have preferred the instant appeal to lay challenge to the same.

2. Bereft of unnecessary details, the facts leading to the filing of

the present appeal, are that the claimants, being the wife, two sons and the mother of the above-named deceased respectively, filed a petition against the respondents, for claiming compensation to the tune of Rs.10 lac, while averring that on 07.02.1993, the deceased was going to Village Silo Khurd in the Truck bearing Registration No.PAT-1564 (for short 'the offending vehicle') for '*nakabandi'* (barricading) duty and this vehicle was being driven by Kultar Singh in a rash and negligent manner at a very high speed. When they reached on the Bridge of the Canal near Village Bhutta, the driver lost control over the offending vehicle which turned turtle and fell into the Canal and this accident resulted into the death of said Ramesh Lal and the driver as well as some other occupants of this vehicle.

3. Respondents No.1 and 2 filed their separate written statements whereas respondents No.3 and 4 submitted their joint written statement contesting the claim, put-forth by the claimants in their petition, on various grounds. The claimants filed their replications to the same and then, the parties were put to the trial by framing the issues. After appreciating and evaluating the evidence led by the parties on the record and hearing their learned counsel, the Tribunal passed the impugned Award, dismissing the claim petition, as already indicated in the opening para of this judgment.

4. It is pertinent to mention here that on 20.02.2014, the Co-ordinate Bench had passed the following order in the instant appeal:-

> "*Learned counsel for the appellants has argued that the Tribunal erred in dismissing the claim petition on the ground that the deceased was a gratuitous passenger. As per him, the truck in question had been*

requisitioned by the police and was being used for counter terrorism operation and this fact was admitted by the State of Punjab in the written statement. He has relied upon the judgment in the case of ***National Insurance Company Ltd. vs. Deepa Devi and others,*** *passed in Civil Appeal No.5796 of 2007, decided on 11.12.2007, where in a similar case the Hon'ble Supreme Court held as follows:-*

> *"10. Parliament either under the 1939 Act or the 1988 Act did not take into consideration a situation of this nature. No doubt, Respondent Nos.3 and 4 continued to be the registered owner of the vehicle despite the fact that the same was requisitioned by the District Magistrate in exercise of its power conferred upon it under the Representation of People Act. A vehicle is requisitioned by a statutory authority, pursuant to the provisions contained in a statue. The owner of the vehicle cannot refuse to abide by the order of requisition of the vehicle by the Deputy Commissioner. While the vehicle remains under requisition, the owner does not exercise any control there-over. The driver may still be the employee of the owner of the vehicle but he has to drive it as per the direction of the officer of the State, who is put in-charge thereof. Save and except for legal ownership, for all intent and purport, the registered owner of the vehicle loses entire control there-over. He has no say as to whether the vehicle should be driven at a given point of time or not. He cannot ask the driver not to drive a vehicle on a bad road. He or the driver*

> *could not possibly say that the vehicle would not be driven in the night. The purpose of requisition is to use the vehicle. For the period the vehicle remains under the control of the State and/or its officers, the owner is only entitled to payment of compensation therefore in terms of the Act but he cannot exercise any control thereupon. In a situation of this nature, this Court must proceed on the presumption that the Parliament while enacting the 1988 Act did not envisage such a situation. If in a given situation, the statutory definitions contained in the 1988 Act cannot be given effect to in letter and spirit, the same should be understood from the common sense point of view."*

Ultimately, it was held that in such a case the State would be liable to pay the compensation. In the present case, the judgment cited above is applicable on all fours. Consequently, the finding that the heirs of the deceased are not entitled to any compensation is set aside. I find that the Tribunal has not quantified the compensation payable. In the circumstances, the matter is remanded back to the Tribunal to re-decide the issue No.7:-

> *"7. To what amount of compensation, the claimants are entitled to and from whom?*

For this purpose the Tribunal will give two effective opportunities to the appellant to prove the income and the respondents will also be granted two opportunities.

Registry is directed to send the record to the Tribunal. Parties through counsel are directed to *appear before the trial Court on 21.04.2014. The report be sent to this Court before the next date of hearing.*

To come up on 22.12.2014."

5. In compliance of the afore-quoted order, the Tribunal has submitted its report, by way of the order dated 08.09.2017 (tagged with the LCR at pages No.33 to 41) and has assessed the amount of compensation, to be payable to the claimants, as Rs.5,78,600/-, along-with interest thereon @ 6% per annum from the date of filing of the petition till its realization, while holding respondents No.3 & 4 to be jointly as well as severally liable to pay the same.

6. I have heard learned counsel for the appellants-claimants and learned counsel for respondent No.2-Insurance Company as well as learned State counsel for respondents No.3 & 4 in the present appeal and have also perused the record carefully.

7. As is explicit from the perusal of the above-referred order dated 20.02.2014, the Co-ordinate Bench has set aside the finding, initially returned by the Tribunal in the impugned Award, to the effect that the legal heirs of the afore-said deceased were not entitled to get any compensation, while categorically observing that the judgment, as handed down by the Apex Court in ***National Insurance Company (Supra),*** holding the State to be liable to pay the amount of compensation, is applicable to the instant case. Concededly, respondents No.3 & 4 (State) have not resorted to any remedy to assail the above-said order. Further, in para No. 17 in the claim petition, meant for denoting the name of the owner of the vehicle involved

in the accident, though the claimants have mentioned that respondent No.1 was the owner of the offending vehicle but they have also specifically disclosed therein that the SSP, District Jagraon, respondent No.3, who was working under the Ministry of Home Affairs, State of Punjab, respondent No.4, had requisitioned the said vehicle. Then, in para No.11 in the afore-said report/order dated 08.09.2017, the Tribunal has observed that RW-2 PHG Jarnail Singh had admitted that the offending vehicle was put on the official duty and therefore, the compensation was to be paid by the State, i.e respondents No.3 & 4 and not by respondent No.2-Insurance Company.

8. So far as the quantum of compensation is concerned, it goes undisputed between the parties that the deceased was about 43 years old at the time of his death in above-said accident and that he was a government employee and was drawing the monthly salary @ Rs.2655/-. Accordingly, in view of the verdict rendered by the Constitution Bench of Hon'ble the Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & Ors. 2017(4) RCR (Civil) 1009***, an amount equivalent to 30% of the afore-mentioned salary of the deceased, i.e Rs.796.50Ps, is to be added therein on the score of future prospects and on so adding, his monthly salary would be (2655+796.50)=Rs.3451.50Ps (rounded off to Rs.3452/-).

9. Though the Tribunal has mentioned in para No.13 of its above-said report/order that claimant No.3 Baljit Singh, one of the sons of the deceased, has also expired during the pendency of the case but keeping in view the fact that all the four claimants were dependent upon the deceased at the time of his death in the afore-mentioned accident, $1/4^{th}$

share of his (deceased's) above-assessed monthly salary, i.e Rs.863/-, is deducted towards his personal expenses, leaving the balance amount of Rs.2589/- to be counted towards the monthly dependency of the claimants. Their annual dependency, thus arrived, would be (2589x12)=Rs.31,068/-.

10. Considering the afore-mentioned age of the deceased and in the light of the observations as made by Hon'ble Supreme Court in ***Sarla Verma & others vs. Delhi Transport Corporation and Anr. 2009(6) SCC 121,*** the multiplier of '14' would be applicable to calculate the amount of compensation and when so applied, the said amount comes out to be (Rs.31068x14)= Rs.4,34,952/-. Beside this amount, claimant No.1-wife, claimants No.2-son and claimant No.4-mother of the deceased, are granted a sum of Rs.44,000/- each towards the loss of spousal, parental and filial consortium respectively. They are further granted an amount of Rs.16,500/- for the funeral expenses and another sum of Rs.16,500/- towards the loss of estate. Thus, the total amount of compensation, as shall be payable to the claimants, comes out to be (434952+132000+16500+16500)=Rs.5,99,952/- whereas the Tribunal has assessed the same as Rs.5,78,600/- and thus, the enhanced amount of compensation would be Rs.21,352/-.

11. As a sequel to the fore-going discussion, the appeal in hand is hereby allowed to the effect that the appellants-claimants No.1, 2 and 4 are entitled to the compensation amounting to **Rs.5,99,952/-** and the same shall carry the interest @ 7.5% per annum from the date of institution of the claim petition till its actual realization and respondents No.3 & 4 shall be jointly and severally liable to pay the same.

12. It is further clarified here that out of the total amount of compensation, claimant No.1-Pushpa Rani shall be entitled to 50% share whereas claimant No.2-Manjit Singh would get 35% share and claimant No.4-Gurdev Kaur would be given the remaining 15% share of the same. Out of the afore-mentioned respective shares of the claimants, 50% amount shall be payable to them in cash whereas the remaining 50% share shall be converted into the Fixed Deposit Receipts for a period of two years.

(MEENAKSHI I. MEHTA)
JUDGE

07.02.2023
seema

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*