IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2824-2009(O&M)
Date of decision:-2.2.2023

Indrawati and others
...Appellants

Versus

Balraj and others
...Respondents

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

Present: Mr.Sandeep Kotla, Advocate
for the appellants.

Mr.Vinod Gupta, Advocate
for respondent No.3.

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H.S. MADAAN, J.

1. Smt.Indrawati – widow, Rink and Pinki, both aged 8 years – minor daughters of Ram Dayal, 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 MV Act) against the respondents i.e. Balraj – driver, Parveen Rawal – owner and New India Insurance Company Ltd., Hisar – insurer of the dumper bearing registration No.HR-39A-7771 (hereinafter referred to as the offending vehicle) before Motor Accident Claims Tribunal, Hisar (hereinafter referred to as the Tribunal).

2. As per the case of the claimants, on 11.3.2008 at about 11:00 a.m., deceased Ram Dayal along with Jit Lal, Chhote Lal and Raj Nath

was returning home from Jindal Strips, Hisar; all of them were on their respective bicycles; Ram Dayal was going ahead of them; when they had reached near turn of Sectors 9 & 11, then the offending vehicle being driven by respondent No.1 Balraj in a rash and negligent manner at a high speed without observing traffic rules came from behind and hit the bicycle of deceased Ram Dayal; as a result Ram Dayal fell down on the road and received serious and grievous injuries on his person; he was taken to N.C. Jindal Hospital, where he was declared dead by the doctor.

FIR No.118 with regard to the accident was got registered Police Station Civil Lines, Hisar on the same day. According to the claimants, the deceased Ram Dayal was aged about 35 years and was working as a mechanic with Jindal Stainless Limited, earning Rs.8,000/- per month. The claimants had claimed compensation of Rs.20 lakhs.

3. On getting notice, all the three respondents appeared initially but subsequently there was no representation on behalf of respondents No.1 and 2 and they were proceeded against ex-parte. Respondent No.3 filed written statement praying for dismissal of the claim petition.

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

5. After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants holding that respondent No.1 Balraj was author of the accident due to rash and negligent driving of the offending vehicle, resulting in death of Ram Dayal. With regard to issue No.3, the same was decided against respondent No.3 insurance company. Coming to issue

No.2, the Tribunal taking into view statements of claimant No.1 Indrawati, who appeared as PW3 and PW2 Sanjeev Kutnar Verma, Executing Person, Jindal Stainless Steel, Limited, where the deceased was employed as Senior Mason, further considering the salary certificates for the year 2007 as Ex.P4 and Ex.P5 had arrived at the conclusion that the total salary of the deceased was Rs.8,100/- per month. Considering the postmortem report, the age of the deceased was taken as 35 years. The Tribunal then proceeded to grant compensation of Rs.9,20,000/- with interest and cost to the claimants, payable by all the three respondents jointly and severally vide award dated 10.2.2009.

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. Respondent No.3 – insurance company has appeared through counsel.

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

9. I find that from the evidence available on record, the Tribunal had rightly taken income of deceased Ram Dayal to be Rs.8,100/- per month. However, the Tribunal has not awarded any amount towards future prospects. The Tribunal has considered the age of deceased to be 35 years. In terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when the deceased was below 40 years, addition of 40% is to be made on the established income towards future prospects. Doing that the monthly

income of the deceased comes out to Rs.11,340/-(8100 + 3240).

10. Keeping in view the number of dependent family members of the deceased, deduction to the extent of 1/3rd 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.7560 (11340 – 3780) and annual dependency comes out to Rs. 7560 x 12 = Rs.90,720/-.

11. The Tribunal has used multiplier of 14. However, keeping in view the judgment ***Smt.Sarla Verma and others Versus Delhi Trans;port Corporation and another, 2009(3) RCR(Civil)77*** of the Apex Court, when the age of deceased was 35 years, then multiplier of 16 ought to have been used. Doing that the compensation payable comes out to Rs. 90,720 x 16 = 14,51,520/-

12. Under the conventional heads, the Tribunal has awarded Rs.12,800/- towards funeral expenses and consortium charges.

13. However, the legal position in that regard has been clarified in a 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. It has been clarified that the amount should be enhanced on percentage basis in every three years. As such

making addition of 10% to such amounts under the head compensation on account of loss of consortium, claimants are entitled to sum of Rs.44,000/- each. Doing that the compensation comes out to be Rs.16,16,520 (14,51,520+44000+44000+44000+16500+16500).

14. In this way, the enhanced amount comes out to Rs.6,96,520/- (16,16,520 – 9,20,000).

15. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the total amount. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been done in the original award. The other terms and conditions given in the relief clause regarding disbursement of the compensation amount shall apply to the enhanced amount as well. It appears that minor claimants Rink and Pinki might have attained majority by now. As such on furnishing of proof of majority, their shares be released to them straightway instead of depositing those in the form of FDR in some nationalized bank.

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

2.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No