IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4550-2019 (O&M)
Reserved on : 10.01.2023
Date of pronouncement: 12.01.2023

National Insurance Company Ltd.

...Appellant

Versus

Sushila and others

...Respondents

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

Present: Mr. B.S. Taunque, Advocate for the appellant.

None for respondents No.1 and 2.

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H.S. MADAAN, J.

Briefly stated facts of the case are that on account of death of Naresh, an unmarried boy, aged about 21 years in a motor vehicular accident, which took place on 06.02.2017 at about 9.00 am, in the area near Flipkart Company near Bilaspur Chowk, statedly on account of rash and negligent driving of bus No.DL-1PC-5172 (for short 'the offending bus') by respondent No.1 Jagat Singh, parents of the deceased namely his mother Smt. Sushila, aged about 42 years and father Sh. Mahavir, aged about 45 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), seeking compensation, against driver Jagat Singh, owner Charan Singh and National insurance company Ltd., Gurugram-insurer of the bus in question.

2. After contest, the claim petition was allowed by Motor Accidents Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal'), vide award dt. 25.03.2019 and a compensation of Rs.15,82,000/- with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization was awarded to the claimants payable by all the respondents jointly and severally.

3. This award left respondent No.3-insurance company aggrieved, and it has approached this Court by way of filing of the present appeal, notice of which was given to the respondent/claimants, who were duly served and had initially put in appearance through counsel on 13.01.2020, who had sought adjournment for addressing arguments and the same was granted to him. Thereafter, he did not put in appearance in the Court on 07.12.2022. The case was adjourned to 10.01.2023 on which date also, respondent/claimants had gone unrepresented.

4. I have heard learned counsel for the appellant-insurance company besides going through the record.

5. The grouse of the appellant-insurance company is quite limited to say that the income of the deceased has wrongly been assessed to be Rs.10,000/- per month, when there was no cogent and convincing evidence produced by the claimants to that effect. Under the circumstances, the wages payable to the unskilled labourers in the State of Haryana at the relevant time should have been taken into consideration while assessing compensation payable, which according to learned counsel for the appellant were Rs.8070/- per month.

6. I have given a thoughtful consideration to such plea of the appellant-insurance company.

7. A perusal of the record goes to show that as per own case of the claimants, the deceased was a daily wage labourer, though according to them, he was doing dairy farming also, but then on scrutinizing the evidence brought on record by the claimants, it comes out that it is in the form of solitary statement of claimant Mahavir, father of the deceased who while appearing as PW-1 had stated that the deceased used to earn his livelihood by doing labour work as well as by selling milk and his income was about Rs. 17,000/- per month. The trial Court in para No.23 has observed that apart from his self serving testimony, there is nothing on record to show that the deceased was earning Rs.17,000/- per month. In the absence of cogent and convincing evidence adduced by the claimants, it seems doubtful as to whether the deceased was engaged in avocation of selling milk, rather, he comes out to be a labourer, working on daily wages. So far as assessing his income, reference to the schedule giving the minimum wages payable to different categories of workers is quite relevant. As per notification, the wages payable to unskilled workers at the relevant time in the State of Haryana were Rs.8070/- per month.

Therefore, in my considered view, the Tribunal was not justified in assessing the monthly income of the deceased at Rs.10,000/-, rather the minimum wages payable to the unskilled workers at that time i.e. Rs.8070/- month should have been taken into consideration. To that amount, 40% thereof is to be added towards future prospects. Doing that, the monthly income of deceased is calculated as Rs. 11,298/-.

8. Since the deceased was a bachelor, 50% of the amount is to be deduced towards his personal and living expenses, leaving the dependency of the deceased as Rs.5649/-. Annual dependency comes out to Rs.67,788/- (Rs.5649 X 12).

9. Applying multiplier of 18, the total dependency in terms of compensation payable is worked out to Rs.12,20,184/- (67,788 X 18).

10. The claimants are entitled to get Rs.15,000/- towards funeral expenses, Rs.15,000/- on account of loss of estate and Rs.40,000/- each under the head loss of consortium. The total compensation payable in that way comes out to Rs.13,30,184/-.

The Tribunal has granted compensation of Rs.15,82,000/- which is found to be somewhat excessive and is reduced to Rs.13,30,184/- payable with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization. The liability to pay this amount being joint and several of all the three respondents. The apportionment and mode of payment shall remain the same as directed by the Tribunal in the impugned award.

11. Since, in the instant appeal, on an application having been filed, this Court vide order dt. 23.07.2019 had stayed operation of the impugned award beyond Rs.12,35,000/-, the remaining amount be released to the claimants immediately by the appellant-insurance company.

12. The appeal is partly allowed with proportionate costs.

12.01.2023 **(H.S. MADAAN)**

sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No

SUMIT KUMAR
2023.01.16 16:42
I attest to the accuracy and
authenticity of this order/judgment