IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO -10335 of 2014 (O&M)
Date of decision : 18.1.2023
...

National Insurance Company Limited, Panipat
................Appellant

vs.

Sheela Devi and others
.................Respondents

2) FAO -4205 of 2015 (O&M)
...
Smt. Sheela Devi and others
................Appellants

vs.

Tarshem and others
.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate for the appellant-Insurance company in FAO 10335-2014 and
for respondent No.3 in FAO 4205-2015.

Mr. D.S. Nain, Advocate for the appellants in FAO-4205-2015 and
for respondents No.1 to 4 in FAO 10335-2014

...

H. S. Madaan, J. (Oral)

By this judgment, I propose to dispose of two appeals bearing FAO -10335 of 2014 titled as 'National Insurance Company Limited, Panipat versus Sheela Devi and others' and FAO -4205 of

2015 titled as 'Smt. Sheela Devi and others versus Tarshem and others', arising out of the same award passed by Motor Accidents Claims Tribunal, Kaithal.

Briefly stated, facts of the case are that, on 27.8.2013 at about 6.00 P.M. Ramphal alongwith his brother Balkar Singh and nephew Parveen, were crossing the road in the area of Vishvakarma Chowk, Kaithal, in order to take a bus for going to their village,. In the meanwhile, Bolero bearing registration No. HR 64-8275, being driven in a rash and negligent manner by Tarshem – respondent No.1 came from Cheeka side and hit Balkar Singh, by going on wrong side of the road. Resultantly, Balkar Singh fell down and suffered multiple injuries. After the accident, Tarshem – driver of the offending vehicle ran away from the spot. Balkar Singh injured was taken to General Hospital, Kaithal, where the doctor declared him dead after some time. Formal FIR with regard to the accident was got recorded by Ramphal with the Police Station, City Kaithal. Smt. Sheela Devi - wife, Seema Devi and Mafi Devi – minor daughters and Sukhdei -mother of the deceased, all residents of village Atela, Tehsil and District, Kaithal, had brought a claim petition under section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), against respondents - Tarshem – driver, Subhash Chand – owner and National Insurance Company Ltd., Panipat – Insurer of offending vehicle Bolero. After contest, the claim petition was accepted by the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') and in terms of award dated 11.8.2014, a compensation of Rs.12,16,400/- was awarded to the claimants, with interest @ 7%

per annum alongwith costs of the petition, payable by all the three respondents, jointly and severally.

The respondent – Insurance company felt aggrieved by the said award and has approached this Court by way of filing an appeal. By filing a separate appeal, the appellants-claimants are seeking enhancement of compensation, whereas the respondent No.3 – Insurance company is pleading that the deceased himself was at fault in crossing the road, where no zebra crossing was there, as such compensation should not have been awarded to the claimants, or at least the factor of contributory negligence should have been taken into consideration, while doing so. It is further case of the appellant-Insurance company that addition of the income of deceased towards future prospects had been made @ 50% , when considering age of the deceased, it should have been upto the extent of 40% only.

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

After considering the rival contentions, I find that the Tribunal considering the facts and circumstances of the case and on analysis of the evidence adduced before it, keeping in view the deposition of PW 2 Parveen Kumar and the fact that respondent No.1 has been booked and challaned for causing the accident in which deceased had lost his life due to rash and negligent driving and further respondent no.1 has not stepped into the witness box to depose on oath that he was not responsible for the accident and rather the accident had occurred on account of negligence of the deceased, has returned a clear finding that respondent No.1 was author of the accident by his rash and negligent driving. It being so, I do not see any reason to disagree with such verdict and came to the conclusion that respondent No.1 was at fault in happening of the accident.

The next ground taken by learned counsel for the appellant Insurance company is with regard to addition towards future prospects @ 50% more than 40% permissible. Although, this aspect requires to be considered, the Tribunal had taken the age of the deceased to be 32 years and assessed his monthly income to be Rs.5,400/- taking into view the minimum wages notified under Minimum Wages Act, 1948, for casual labourer. In terms of the settled law, considering age of the deceased, 40% of the monthly income should have been added towards future prospects, which comes out to Rs. 5,400 + 2,160 = Rs.7,560/-.

Considering the number of dependent family members, deduction of 1/4th is to be made towards personal and living expenses of deceased, leaving the dependancy of the claimants to be Rs.7,560 -1,890 = Rs.5,670/- and the annual dependancy to Rs.5,670 x 12 = Rs.68,040/-.

Taking into view the age of the deceased, multiplier of 16 has been rightly used by the Tribunal. Thus, by applying the same, the amount comes out to Rs. 68,040 x 16 = Rs.10,88,640/-.

The claimants are entitled to get Rs.15,000/- towards funeral expenses and Rs.15,000/- on account of loss of estate and Rs.40,000/- each under the Head loss of consortium. In that way the total compensation works out to be Rs.10,88,640 + Rs.1,90,000 = Rs.12,78,640/-, whereas the Tribunal has awarded compensation of

Rs.12,16,400/-.

In that way, the compensation is enhanced to Rs.12,78,640/- and difference being (Rs.12,78,640 – 12,16,400) = Rs.62,240/-, which would be payable by all the respondents, jointly and severely alongwith interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The apportionment of compensation and the manner of payment shall remain same as directed by the Tribunal in the impugned award.

Therefore, the appeal filed by the appellant -Insurance company i.e. FAO 10335-2014 stands dismissed and the appeal filed by the claimants i.e. FAO 4205-2015 is allowed partly.

(H.S. Madaan)
Judge

18.1.2023
chugh

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