IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1189-2014(O&M)
Date of decision:-21.3.2023

Krishna Devi

...Appellant

Versus

Narinder Kumar alias Surinder Kumar and others

...Respondents

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

Present: Mr.Munish Gupta, Advocate
for the appellant.

Mr.Neeraj Khanna, Advocate for
Mr.Ravinder Arora, Advocate
for respondent No.3.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner/claimant Smt.Krishna Devi wife of Amar Pal, resident of village Kala Bahian, P.S. Kartarpur, Tehsil and District Jalandhar 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. Narinder Kumar @ Surinder Kumar – driver, Suresh Kumar – owner and Oriental Insurance Company Ltd., Bilaspur (H.P.) - insurer of the truck bearing registration No.HP-51-1187 (hereinafter referred to as the offending truck) before Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the Tribunal), on account of death of her bachelor son Ranjit Singh, aged about 22 years in a motor vehicular accident, which took place on

9.7.2012 in the area of drain bridge, village Chuharwali due to rash and negligent driving of offending truck by its driver respondent No.1 Narinder Kumar @ Surinder Kumar.

2. On notice, all the three respondents appeared and contested the claim petition. Issues on merits were framed and parties were afforded adequate opportunities to lead their evidence.

3. After hearing arguments, the Tribunal vide award dated 21.10.2013 accepted the claim petition and awarded compensation of Rs.6,08,800/- to the claimant with future interest @ 9% per annum over the awarded amount from the date of filing of the claim petition till actual realization, payable by respondent No.1 Narinder Kumar @ Surinder Kumar - driver and respondent No.2 Suresh Kumar – owner of the offending truck jointly and severally. Whereas the respondent No.3 insurance company was absolved of its liability for the reason that respondent No.1 Narinder Kumar @ Surinder Kumar was unable to show that he was possessing a legal and valid driving licence at the time of accident.

4. This award left the claimant aggrieved and she has approached this Court by filing the present appeal seeking enhancement of the compensation awarded to the her.

5. Notice of the appeal was given to respondents. Initially all the respondents had appeared through counsel. However, later on there was no representation on behalf of respondents No.1 and 2.

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

7. The first argument advanced on behalf of learned counsel for the appellant/claimant was that the Tribunal has not added any amount towards future prospects and considering the age of deceased to be 22 years in terms of ratio of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*** , 40% of the amount was required to be added as future prospects.

8. This contention raised by learned counsel for the appellant has got merit. The Tribunal on analysis of the evidence available on the record had taken the monthly income of the deceased to be Rs.4,850/-, as per the salary certificate Ex.C1. The version of the petitioner/claimant that deceased was a Plumber with Baba Bhag Singh Institute of Engineering & Technology, earning Rs.20,000/- to Rs.25,000/- per month was rejected on account of lack of evidence. Even then, 40% of the amount ought to have been added towards future prospects. Doing that the monthly income of the deceased comes out to Rs.6,790/-(4850 + 1940).

9. Keeping in view the fact that the deceased was a bachelor, deduction to the extent of 50% is to be made to the income of the deceased as personal expenses. Doing that, the monthly dependency of the claimant comes out to Rs.3395/- and annual dependency comes out to Rs. 3395 x 12 = Rs.40740/-.

10. The Tribunal has used multiplier of 18, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 40740 x 18 = 7,33,320/-.

11. Under the conventional heads, the Tribunal has awarded Rs.25,000/- as funeral charges, Rs.10,000/- towards transportation charges

and Rs.50,000/- under the head loss of consortium.

12. 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. Doing that the compensation comes out to be Rs.8,03,320/- (7,33,320+40000+15,000+15,000).

13. In this way, the enhanced amount comes out to Rs.1,94,520/- (8,03,320 – 6,08,800).

14. Now coming to the second ground of attack by learned counsel for the appellant/claimant, which is with regard to the insurance company having been wrongly absolved of its liability to pay compensation.

15. Learned counsel for the appellant/claimant has contended that even if it is taken that respondents No.1 and 2 had not placed on record driving licence of respondent No.1 despite an application having been filed on behalf of respondent No.3 – insurance company, leading to an adverse inference against respondents No.1 and 2 that respondent No.1 was not possessing a valid driving licence at the time of accident. However, qua petitioner/claimant, who was a third party, liability of

respondent No.3 insurance company remained intact though recovery rights could be granted to such insurance company to effect the recovery of amount paid by it from owner of the vehicle, who had purchased the insurance policy with regard to the offending truck from such insurance company. In support of his that contention, he has referred to judgment ***S.Iyyapan Versus M/s United India Insurance Company Ltd. and another, 2013(3) RCR(Civil)654*** by the Apex Court wherein it was observed that it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer and it is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

16. Although learned counsel for the insurance company has contested such assertion made by learned counsel for the appellant/claimant but I find merit in the submissions made by learned counsel for the appellant/claimant. It is not disputed that the offending truck was insured with respondent No.3 Oriental Insurance Company at the relevant time. Even if, it is taken that respondent No.1 was not possessing a legal and valid driving licence at the time of accident resulting in violation of terms and conditions of the insurance policy that is with regard to insurance contract between respondent No.2 Suresh Kumar insured and respondent No.3 – insurer of the vehicle in question, the third persons, who are not party to that contract are not bound by the same. Therefore, the Tribunal fell in error in absolving the insurance company of its liability to pay compensation to the petitioner/claimant though insurance company could recover that amount from respondent

No.2 – Suresh Kumar - insured urging violation of terms and conditions of the insurance policy.

17. Therefore, the impugned award is modified to the extent that the compensation awarded is enhanced to Rs.8,03,320/-, payable with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The liability to pay this amount to the appellant/petitioner being joint and several of all the respondents. However, the respondent No.3 – insurance company would have a right to recover the amount so paid by it to petitioner/claimant for the satisfaction of the award from respondent No.2 Suresh Kumar - insured.

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

Since the main appeal is partly allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

21.3.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No