IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1517-2014(O&M)
Date of decision:-1.2.2023

Smt.Rinki and others

...Appellants

Versus

Rameshwar and others

...Respondents

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

Present: Mr.Sagar Aggarwal, Advocate
for the appellants.

Mr.Rajesh Bansal, Advocate
for respondent No.3.

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H.S. MADAAN, J.

1. Smt.Rinki aged about 28 years – wife, Baby Ankasha aged about 3 years – minor daughter, Master Devasish aged about 2 months – minor son, Smt.Mithlesh Chauhan aged about 50 years – mother and Sh.Ashok Kumar aged about 51 years – father of Jitender Kumar, 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. Rameshwar – driver, Rajpal – owner and Iffco Tokia General Insurance Company Ltd. - insurer of the tractor bearing registration No.HR-75-4059 (hereinafter referred to as the offending tractor), claiming compensation.

2. As per the case of the claimants, the accident, which took

place on 3.12.2011 in which Jitender Kumar had lost his life was outcome of rash and negligent driving of the offending tractor by respondent No.1 – Rameshwar.

3. On getting notice of the claim petition, all the three respondents had put in appearance. Respondents No.1 and 2 had filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

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

5. After hearing arguments, Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) vide award dated 1.11.2013 accepted the claim petition partly and granted compensation of Rs.9,09,950/- to the claimants with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

6. Finding the compensation awarded to be on lesser side, the claimants have approached this Court by way of filing the present appeal seeking enhancement of the compensation awarded to them.

7. Notice of the appeal was given to respondents, who put in appearance through counsel. However, later on there was no representation on behalf of respondents No.1 and 2.

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

9. In this case, the Tribunal on the basis of evidence produced before it while deciding issue No.1 had returned a finding that the

accident in question in which Jitender Kumar had lost his life had taken place due to rash and negligent driving of the offending tractor by respondent No.1 Rameshwar. The finding comes out to have been correctly arrived and there is no reason to differ with that.

10. While determining the compensation payable, the Tribunal had taken age of deceased as 29 years, considering that in Middle Examination Certificate of deceased Jitender Singh his date of birth is written as 16.6.1982, whereas the accident had taken place on 3.12.2011, in that way he was aged a little more than 29 years. With regard to his avocation and income, though the claimants had pleaded that he was running an authorized Maruti Service Station in the name and style of Ashok Motor, Indri, District Karnal and copy of partnership deed Ex.P16 was placed on record by the claimants to show that Ashok Kumar and Jitender Kumar deceased were partners in the service station, however the Tribunal after perusing copy of bank passbook of the deceased observed that it cannot be said that deceased was earning Rs.40,000/- per month because from the perusal of income tax returns and balance sheet of M/s Ashoka Motors, in which the income of both the deceased and his father Ashok Kumar has been shown to be Rs.93,038/- observing that since there were two partners in the service station, the income of the deceased Jitender Kumar be taken as half of Rs.93,038/- i.e. Rs.46,519/- and such income had been shown in the balance sheet in column of the partners capital account.

11. However, I find that the income of the deceased has been assessed on lower side. Keeping in view the fact that he was statedly

holding a B-tech degree, as is evident from the Detailed Marks Card Ex.P11, copy of Degree P12, he was having a bank account also, which is evident from bank account statement Ex.P13, PAN Card Ex.P14; he had been filing income tax returns also as is clear from copies of returns Ex.P18 and Ex.P19 produced in evidence before the Tribunal. Therefore, assessing income of deceased Rs.69,800/- per year cannot be said to have been properly done more particularly when as per notification the minimum wages of the workers in the State of Haryana at the relevant time for skilled worker A were Rs.5033.89, B Rs.5163.89 and highly skilled Rs.5293.89. Keeping in view the fact that the deceased was an Engineer having B-Tech degree, he is to be treated at par with a highly skilled worker carrying minimum wages of Rs.5293.89 say Rs.5,294/-.

Considering the age of the deceased as 29 years, in terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, an 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.7411/-(5294 + 2117).

12. Keeping in view the number of dependent family members of the deceased, deduction to the extent of 1/4th 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.5559 (7411 – 1852) and annual dependency comes out to Rs. 5559 x 12 = Rs.66,708/-.

13. The Tribunal has used multiplier of 17, which keeping in view the age of the deceased has been properly used. Doing that the compensation payable comes out to Rs. 66,708 x 17 = 11,34,036/-.

14. Under the conventional heads, the Tribunal has awarded Rs.5,000/- towards loss of estate, Rs.5,000/ towards funeral expenses. The claimant No.1, who was widow of deceased as also awarded Rs.10,000/- as loss of consortium.

15. However, the legal position in that regard has been clarified in subsequent 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.

16. Doing that the compensation comes out to be Rs.13,64,036/- (11,34,036+40000+40000+40000+40000+40000+15000+15000).

17. In this way, the enhanced amount comes out to Rs.4,54,086/- (13,64,036 – 9,09,950).

18. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.4,54,086/-. 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.

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

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

1.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No