IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4114-2016(O&M)
Reserved on:-3.5.2023
Date of Pronouncement:-10.5.2023

Smt.Sakshi Gupta and others

...Appellants

Versus

Sanjay Parsad and others

...Respondents

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

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

None for respondents No.1 and 2.

Er.Sandeep Suri, Advocate
for respondent No.3.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of death of Niranjan Dass, aged about 64 years, in a motor vehicular accident, which took place on 12.10.2010 in the area of near Gate No.3, Sugar Mill, Jind on Jind - Narwana Road, statedly on account of rash and negligent driving of truck trailer No.WB-23B-1216 (hereinafter referred to as the offending vehicle) by respondent No.1 Sanjay Parsad, legal representatives of such deceased, namely, Smt.Sakshi Gupta – married daughter, Jitender Kumar and Surender Kumar major sons of deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Sanjay Parsad - driver, Satwant Singh – owner and Bajaj Allianaz General Insurance Company, Karnal – insurer of the offending vehicle, before Motor Accident Claims Tribunal, Karnal

(hereinafter referred to as the Tribunal).

2. After contest, the claim petition was accepted partly by the Tribunal vide award dated 12.3.2014 and compensation of Rs.1,60,000/- i.e. Rs.50,000/- under no fault liability, Rs.10,000/- for transportation and last rites and Rs.1,00,000/- on account of love and affection was awarded to the claimants to be shared equally amongst them with interest @ 9% per annum from the date of filing of the claim petition till recovery. The liability to pay this amount was held to be joint and several of respondents No.1 to 3.

3. Feeling that the compensation awarded to them was on lower side, the claimants have approached this Court by filing the present appeal seeking enhancement of the compensation awarded to them.

4. Notice of the appeal was issued to the respondents. Initially respondents No.1 and 2 had put in appearance, however, later on there was no representation on their behalf. Whereas respondent No.3 insurance company is represented through counsel.

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

6. The Tribunal considering the facts and circumstances of the case and evidence brought on record has given a clear verdict that the accident in which Niranjan Dass had lost his life had taken place due to rash and negligent driving of offending vehicle by respondent No.1 – Sanjay Parsad, as such, Sanjay Parsad being driver, Satwant Singh as owner and Bajaj Allianaz General Insurance Company Ltd. - insurer of the offending vehicle were held to be jointly and severally liable to pay

compensation to the petitioners/claimants, who are children of the deceased.

7. However, the Tribunal fell in error in not granting proper and appropriate compensation to the claimants mainly for the reason that since all of them were married and were not dependent upon earnings of the deceased, therefore, they are not entitled to get any compensation on account of his death in a road side accident.

8. The whole approach of the Tribunal in doing so was misdirected and wrong. The Apex Court in various judgments has held that even major married children of the deceased having source of income have a right to apply for compensation in their capacity as LRs. In judgment ***Manjuri Bera Versus The Oriental Insurance Company Ltd. and another*** passed in Civil Appeal No.1702 2007 arising out of SLP(C) No.14943 of 2004, it was observed that a legal representative is entitled to compensation, even if he was not dependent on deceased and there was no loss of dependency. It was further observed that when the deceased did not leave any legal heir except married daughter, such daughter was entitled to compensation though she was not dependent on her father. In another judgment ***National Insurance Company Ltd. Versus Birender and others, 2021(3) PLR 146***, it was observed that even major married and earning sons of deceased being legal representatives have right to apply for compensation in case of accidental death. Therefore, such observations by the Tribunal was obviously wrong and the petitioners/claimants have got right to get compensation from all the three respondents.

9. Now coming to the quantum part. As per the case of the petitioners, the deceased was running a floor mill and having consistent income out of the same. He was a professional Consultant and was Advisor to Rama Associates Pvt. Ltd and ASEL Agro Pvt. Ltd., earning handsome income as a Consultant. Pawan Bansal working as Accounts Officer with Rama Associates Ltd. also looking after accounts of ASEl Agro Private Ltd., which is sister concern of Rama Associates Ltd. had appeared as PW1. He stated that Niranjan Dass was appointed as a Consultant with ASEL Agro Pvt. Ltd. vide letter of appointment dated 1.4.2007 on a monthly retainership of Rs.27,500/-. He proved letter of appointment as Ex.P4. He further stated that Niranjan Dass was appointed as Consultant by Rama Associates Ltd. vide letter of appointment dated 1.12.2001 Ex.P5. He had deposed regarding the TDS deduction in the year 2007-08 to 2009-10. In his cross-examination, he stated that he could not say whether matter of appointment of Niranjan Dass as Consultant was taken up by the Board of Directors or not. He stated that he had not brought the details of bank account statements and bank account details in ledger of both the companies. He further stated that he had not brought the income tax returns of those two companies. PW2 Pyare Lal Gupta, Chartered Accountant stated that he had audited the accounts of of M/s Maha Laxmi Roller Floor Mills a proprietorship concern of Niranjan Dass. He proved income tax returns and documents relating thereto of such concern. In his cross-examination, he stated that now it has become a partnership concern consisting of two sons of Niranjan Dass, namely Jitender Kumar and Surender Kumar; that means the mill is still running.

PW3 Ram Chander Bansal, STA office of Deputy Commissioner of Income Tax, Hissar had brought the record of income tax returns filed by Niranjan Dass for the assessment year from the year 2006-07, 2007-08, 2009-10 and 2010-11 proving copies of returns along with annexures. Though the income tax returns show the income of deceased from Roller Floor Mill running into lakhs of rupees but then after death of Niranjan Dass, Roller mills is still working being run by his sons. The claimants are to be compensated for the efforts in running the affairs of the roller mill and managing the same, which are quantified as Rs.25,000/- per month.

10. As far as the other income drawn by the deceased, he was said to be working as a Consultant with two sister concerns, getting Rs.27,500/- per month. I find it proper and appropriate to assess the monthly income of the deceased as Rs.50,000/-. Since the children of the deceased are not shown to be dependent upon him for their needs and in all likelihood he would have spent a substantial portion of his earning to meet his own living and personal expenses. In terms of judgment by the Apex Court i.e. ***New India Assurance Co. Ltd. Versus Vinish Jain and others, 2018(1) PLR 759***, 50% of the amount is to be deducted towards personal and living expenses of the deceased. Doing that the contribution towards the claimants comes out to Rs.25,000/- (50000 – 25000) and annual dependency comes out to Rs. 25000 x 12 = Rs.3,00,000/-.

11. Considering the age of the deceased as 64 years, no addition is to be made towards future prospects.

12. In terms of the judgment ***Smt.Sarla Verma and others Versus Delhi Trans;port Corporation and another, 2009(3)***

RCR(Civil)77 of the Apex Court, the multiplier of 7 ought to have been used. Doing that the compensation payable comes out to Rs. 21,00,000/- (300000 x 7).

13. As per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

Doing that the compensation comes out to be Rs.21,70,000/- (21,00,000 + 40,000 + 15,000 + 15,000).

14. The Tribunal has awarded compensation of Rs.1,60,000/-

15. In this way, the enhanced amount comes out to be Rs.20,10,000/- (21,70,000 – 1,60,000).

20. The claimants would be entitled to get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. The amount is to be apportioned among all the claimants in equal proportions.

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

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

10.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No