IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2089-2017(O&M)
Reserved on:-25.4.2023
Date of Pronouncement:-3.5.2023

National Insurance Company Ltd.

...Appellant

Versus

Jasvir Kaur and others

...Respondents

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

Present: Mr.Deepak Suri, Advocate
for the appellant.

Mr.Shubhashish Kukreti, Advocate
for respondents No.1 and 2.

Mr.Ishan Gupta, Advocate with
Mr.Gagandeep Singh, Advocate
for respondents No.3 and 4.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of unfortunate demise of Sukhdev Singh in a road side accident, which took place on 25.3.2014 near Lehal Colony, Patiala within the jurisdiction of Police Station Civil Lines, Patiala, statedly due to rash and negligent driving of truck bearing registration No.PB-13Z-5203 (hereinafter referred to as the offending truck) by respondent No.1 Kuldeep Singh @ Bagga Singh, legal representatives of such deceased, namely his wife – Jasvir Kaur, aged about 49 years and son - Lovepreet Singh, aged about 21 years had brought a claim petition under Section 166 of the Motor Vehicles Act,

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1988 (hereinafter referred to as the Act) against respondents i.e. Kuldeep Singh alias Bagga Singh – driver, Anil Goyal – owner and National Insurance Company Ltd. – insurer of the offending truck, claiming compensation.

2. On being put to notice, all the three respondents had appeared and offered a contest.

3. After hearing arguments, the Motor Accidents Claims Tribunal, Bathinda (hereinafter referred to as the Tribunal) while allowing the claim petition partly vide award dated 2.1.2017, granted a compensation of Rs.91,51,452/- to the claimants in equal shares payable by respondent No.3 insurance company. It was made clear that if the amount of compensation is not paid within 45 days by the respondent No.3 insurance company to the claimants from the date of receipt of copy of that award, in that case the claimants would be entitled to an interest of 10% per annum from the date of filing of the petition till realization of the amount.

4. This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

5. Notice of the appeal was given to the respondents, who have put in appearance through counsel.

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

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7. The Tribunal on analysis of the evidence brought before it had returned a clear finding that the accident in which deceased Sukhdev Singh had lost his life had taken place on account of rash and negligent driving of the offending truck by Kuldeep Singh @ Bagga Singh – respondent No.1, as such, the driver, owner and insurer of the offending truck were found liable to pay compensation to the claimants, who are LRs of the deceased. Since the truck was found to be duly insured with appellant – insurance company at the relevant time with no violation of terms and conditions of the insurance policy coming out to be there, the insurance company was found liable to indemnify the insured and to make payment of compensation amount awarded to the claimants.

8. Now coming to the quantum of compensation awarded.

The claimants in the claim petition filed by them had prayed for grant of compensation of Rs.50 lakhs. The claimant No.2 Lovepreet Singh appearing as PW1 in the affidavit Ex.CW1/A tendered by him had also sought compensation of Rs.50 lakhs. However, the Tribunal found them entitled to get compensation more than that. But then the Tribunal has committed some errors in computing the compensation. The Tribunal has taken the monthly salary of the deceased at the time of his death as Rs.66,135/-. However, the salary account of the deceased Ex.CW5/A goes to show that though the net salary drawn by him was Rs.66,135/- but one aspect, which escaped the attention of the Tribunal was that with regard to liability to pay income tax. In the salary statement Ex.C1, it comes out that the deceased was paying income tax to the tune of around Rs.5,810/- per month, which is to be deducted from the monthly salary, leaving the

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remainder as Rs.60,325/-(66135 – 5810).

9. The Tribunal has granted increase of 30% towards future prospects. The deceased, who was in service of nationalized bank would have retire at the age of 60 at the most. In terms of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased had a permanent job and was between the age of 50 to 60 years, an addition towards future prospects should be 15% and actual salary should be read as actual salary less tax. In that way, instead of taking the future prospects 30%, I find it proper and appropriate to take such prospects as 15%. Doing that the monthly income of the deceased is taken as Rs.69,373/- (60325 + 9048).

10. In this case the Tribunal has rightly deducted 1/3rd of the amount towards self expenses in terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77***. Doing that the dependency of claimants comes out to Rs.46248/- per month (69373 - 23124), annual dependency comes out to Rs. 46199 x 12 = Rs.5,54,976/-.

11. The Tribunal has used multiplier of 13, which keeping in view the age of the deceased has been properly done. Doing that the compensation payable comes out to Rs. 5,54,388 x 13 = 72,14,688/-.

12. Under the conventional head i.e. loss of consortium and loss of love and affection, the Tribunal has awarded a sum of Rs.1 lakh to each of the claimant. Further under the head funeral expenses, the Tribunal has further awarded Rs.10,000/- to the claimants.

13. However, as per the latest judgment ***Shri Ram General***

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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.

Then the total compensation payable comes out to be Rs.72,84,688 /- (72,14,688 + 40,000 + 15,000 + 15,000).

14. The Tribunal has wrongly awarded compensation of Rs.91,51,452/-. The same is reduced to Rs.72,84,688/-. The claimants would be entitled to get interest @ 7.5% per annum on this amount from the date of filing of the claim petition till actual realization. Other terms and conditions in the original award shall remain the same. The excess amount if received by claimants be returned by them otherwise the appellant – insurance company shall be entitled to recover it by filing an execution application before the Tribunal.

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

3.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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