IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2790-2017(O&M)
Reserved on:-19.4.2023
Date of Pronouncement:-26.4.2023

National Insurance Company Ltd.

...Appellant

Versus

Ram Dulari @ Nirmala Devi and others

...Respondents

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

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

Mr.Lovish Rattan, Advocate
for respondents No.1 to 10.

Mr.Rozer Kumar Aggarwal, AAG, Punjab
for respondents No.13 and 14.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of death of Sham Sunder in a motor vehicular accident, which took place on 15.3.2014 in the area between Lamma Pind to Chaughiti statedly on account of rash and negligent driving of bus bearing registration No.PB-02-BH-9795 (hereinafter referred to as the offending bus) of Punjab Roadways, Amritsar-II, Kilometer Scheme, Amritsar Roadways Depot-II by its driver Kulwinder Singh, legal representatives of deceased, namely

Ram Dulari @ Nirmala Devi and 9 others, all residents of village Biswa, Police Station Jaitapur, District Behrich (Bihar) at present resident of C/o Kewal Singh Da Khu, Chaughiti, Tehsil and District Jalandhar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Kulwinder Singh – driver, Avtar Singh – owner, General Manager, Punjab Roadways, Amritsar-II, Kilometer Scheme, Amritsar Roadways Depot-II, Amritsar as well as Director Transport, Chandigarh and National Insurance Company Ltd. Amritsar – insurer of the offending bus before Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the Tribunal).

2. After contest the claim petition was accepted by the Tribunal and vide award dated 19.1.2017 compensation of Rs.15,02,000/- was granted as per the details below:

Sr.No.	Heads of Claim	Tribunal Amount(Rs)
1.	Annual Income	Rs.1,02,000/-
2.	Future Prospectus @ 50%	Rs.51000/-
3.	Total annual income	Rs.1,53000/-
4.	Deduction 1/2.	Rs.76,500/-
5.	Multiplicand (annualized)	76,500/-
6.	Multiplier	76,500 x 18=13,77,000/-
7.	Loss of estate	1,00,000/-
8.	Funeral expenses	25,000/-
	Total	Rs.15,02,000/-

The compensation was payable with interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The liability of respondents No.1, 2 and 5 to pay the amount of compensation to claimants/petitioners No.1, 2 and 8 to 10 was held to be joint and several.

3. This award left the respondent No.5 - 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.

4. Notice of the appeal was given to the respondents and respondents No.1 to 10 as well as 13 and 14 have put in appearance through counsel.

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

6. In this case, the Tribunal in view of the pleadings of the parties considering the facts and circumstances of the case as well as evidence brought on record by the contestants has returned a clear finding that respondent No.1 Kulwinder Singh was author of the accident in which Sham Sunder had lost his life on account of rash and negligent driving of the offending bus, as such claimants No.1 and 2 being parents of the deceased and claimants No.8 to 10 being minor siblings of the deceased were found entitled to claim compensation from the driver, owner and insurance company of the bus in question.

7. For the purpose of assessing the compensation payable, the Tribunal has taken the age of deceased to be 18 years and his monthly income to be Rs.8,500/- on the basis of statement of PW3 Nachhatar Singh. However, the other plea of the claimants that he was selling vegetable and fruits and earning income therefrom was not found to be established, as such was rejected.

8. However, I find that the evidence adduced by the claimants that deceased was earning Rs.8,500/- per month by working in the fields of Kewal Singh at his well installed in their fields and entire maintenance work of agriculture does not deserve to be doubted more particularly when PW3 Nachhatar Singh categorically deposed in that regard. The Tribunal while taking income of the deceased to be Rs.8,500/- per month and annual income Rs.1,02,000/- has allowed an addition of 50% towards future prospects. However, the Tribunal fell in error in doing so. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased was below 40 years, 40% of the established income is to be added towards future prospects. Doing that the annual income of the deceased is taken as Rs.1,42,800/-(11900 x 12).

9. Since the deceased was a bachelor, 50% of the amount is to be deducted 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 annual dependency of claimants comes out to Rs.71,400/-.

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. 71,400 x 18 = 12,85,200/-.

11. Under the conventional head loss of estate, the Tribunal has awarded Rs.1 lakh and under the head funeral expenses the Tribunal has further awarded a sum of Rs.25,000/-.

12. However, 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 to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

13. Doing that the compensation comes out to be Rs.13,55,200/- (12,85,200 + 40,000 + 15,000 + 15,000).

14. The Tribunal has wrongly awarded compensation of Rs.15,02,000/-. The same is reduced to Rs.13,55,200/-. The liability to pay this amount is joint and several of respondents No.1, 2 and 5. The claimants No.1, 2, 8 to 10 would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs. 13,55,20 /-. Other terms and conditions in the original award shall remain the same. The apportionment of compensation as well as manner of payment shall remain the same as directed by the Tribunal in the award. However, the amount payable to them shall stand reduced proportionately. 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.

26.4.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No