IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1559-2018(O&M) with
XOBJC-41-2019(O&M)
Reserved on:-5.7.2023
Date of Pronouncement:-10.7.2023

National Insurance Company Ltd.

...Appellant

Versus

Asha Devi and others

...Respondents

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

Present: Mr.Deepak Suri, Advocate with
Mr.B.B. Sharma, Advocate
for the appellant.

Mr.S.K. Kaushik, Advocate
for respondents No.1 to 4/cross-objectors.

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H.S. MADAAN, J.

**CM-4765-CII-2019 in
XOBJC-41-2019**

For the reasons mentioned in the application, the same is allowed and delay of 194 days in filing of the cross objections stands condoned.

**FAO-1559-2018(O&M) with
XOBJC-41-2019(O&M)**

1. Briefly stated, facts of the case are that one Naresh Kumar son of Bhikhu Ram had died in a motor vehicular accident, which took place on 6.12.2016 in the area near Ch.Ranbir Singh University, Bye-pass, Rohtak Road, Jind, statedly on account rash and negligent driving of car bearing registration No.HR69C-3073 (hereinafter referred to as the offending car) by respondent No.1 – Ramesh Kumar.

2. The legal representatives of the deceased, namely, his widow - Asha Devi, aged about 35 years, daughter – Manisha, aged about 18 years, minor son – Sanyam, aged 14 years and another daughter – Kajal, aged 19 years, all residents of Gohana Mor Ward No.5, Meham, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Ramesh Kumar – driver, Surender Kumar – owner and National Insurance Company Ltd. - insurer of the offending car in question before Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as the Tribunal).

3. On being given notice, all the three respondents appeared and contested the claim petition. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

4. After hearing arguments, the claim petition was partly allowed by the Tribunal and compensation of Rs.37,35,500/- with interest at the rate of 9% per annum from the date of filing of the petition till the realization of that amount was awarded to the claimants, payable by all the respondents jointly and severally.

5. Feeling aggrieved by the said award passed, the respondent No.3 – insurance company has filed an appeal before this Court, notice of which was given to respondents. Respondents No.1 to 4 – claimants have put in appearance through counsel and filed cross-objections seeking enhancement of compensation.

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

through the record.

7. Here both the parties are contesting on the point of quantum of compensation inasmuch as according to the appellant – insurance company, the compensation awarded is on higher side and it should be reduced, whereas according to respondents No.1 to 4/claimants, such compensation is insufficient and deserves to be enhanced.

8. Learned counsel for the appellant – insurance company has not challenged the award with regard to age of the deceased being taken as 40 years and his income as Rs.19,440/- per month with addition of 25% towards future prospects. He has further not assailed the award with regard to deduction of 1/4th towards personal and living expenses of the deceased and use of multiplier of 15 and loss of dependency having been worked out to Rs.32,80,500/- besides grant of Rs.40,000/- to the spouse under the head loss of consortium. However, he has challenged grant of Rs.4,00,000/- under the head loss of love and affection for widow and children of the deceased citing judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, wherein the Apex Court had observed that a sum of Rs.40,000/- in total is to be granted under the head loss of consortium to all the claimants and not Rs.40,000/- each to every claimant.

9. The Tribunal has awarded a sum of Rs.15,000/- as funeral expenses but omitted to award Rs.15,000/- on account of loss of estate.

10. I find force in the argument of learned counsel for the appellant – insurance company with regard to the Tribunal having

wrongly awarded a sum of Rs.4 lakhs to the claimants. That amount is ordered to be deducted from the compensation payable. However, a sum of Rs.15,000/- is awarded under the head loss of estate making the total compensation as Rs.33,50,500/-.

11. Though learned counsel for the respondents No.1 to 4/cross-objectors argued that the amount of compensation deserves to be enhanced but he has failed to convince me in that regard. Rather the compensation amount deserves to be reduced as mentioned above.

12. The Tribunal has wrongly awarded compensation of Rs.37,35,500/-, the same is reduced to Rs.33,50,500 /-. Other terms and conditions including the apportionment of compensation and mode of payment shall remaining the same as directed in the original award, though the amount payable to the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants at the earliest.

13. With such modification, FAO-1559-2018 filed on behalf of the insurance company stands partly allowed.

14. In view of the above discussion, XOBJC-41-2019 filed on behalf of the claimants being devoid of merit stand dismissed.

Since the main FAO-1559-2018 is allowed partly and XOBJC-41-2019 stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

10.7.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No