2023:PHHC:066677

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1970 of 2018 (O&M)
Date of decision : 9.5.2023

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Mst. Vahidan (through LRs) and others

................Appellants

vs.

Babloo and others

.................Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sailender Singh, Advocate for the appellants.

Mr. Punit Jain, Advocate for respondent No.3 - Insurance company.

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H. S. Madaan, J. (Oral)

Briefly stated, facts of the case are that, on 5.2.2014, deceased Bashir Ahmed, alongwith his son Juber Khan, was going to village Dhauj in an Auto Rickshaw bearing registration No. HR-38Q-9366, being driven at a moderate speed by its driver on correct left hand side of the road. In the meanwhile, a Pick-up Van bearing registration No. DL-1LK-7285, being driven in a rash and negligent manner by respondent No.1 Babloo, came from the opposite side and dashed against the Auto Rickshaw. Resultantly, Bashir Ahmed fell down and received multiple injuries, to which he succumbed at the spot. The matter was reported to the Police and a formal FIR No. 35 dated 5.2.2014, for offences under Sections 279, 337, 304-A IPC, was registered at Police Station Sector 55, Faridabad. The legal representatives of the deceased, namely, his widow Mst. Vahidan, aged about 54 years, major son Juber Khan, aged 37 years, major daughter Kumari Anjuman, aged 19 years, minor son Azhar @ Ajrudddin, aged 17 years – all residents of village Dhiranki, Tehsil Hathin, District Palwal, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against respondents i.e. Babloo – driver, Parvinder - owner and Chola Mandalam MS General Insurance Company Limited, Faridabad – insurer of the offending Pick-up van. The claimants had impleaded other children of the deceased, namely, son – Javed Khan, married daughters – Mst. Razia, Mst Arifa and Mst. Shahina, as proforma respondents No. 4 to 7.

Notice of the claim petition was issued to the respondents. Respondents No. 1 and 2 did not appear, despite service and were proceeded against ex parte. However, the contest was offered by respondent No.3 – Insurance Company. The Motor Accidents Claims Tribunal, Palwal, vide award dated 25.4.2017 accepted the claim petition and granted a compensation of Rs.6,54,000/- with interest @ 7.5% per annum from the date of filing of the claim petition, till actual realization, alongwith cost of the petition. Respondent No.3 – Insurance company was granted recovery rights from respondent No.2 for the reason that driving license possessed by respondent No.1 Babloo, on being enquired was not found to be genuine but rather a fabricated document.

Finding the compensation so awarded to be on lower side, the claimants have approached this Court by way of filing the present appeal, notice of which was given to the respondents. However, only respondent No.3 – Insurance company has put in appearance to contest the appeal.

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

Learned counsel for the appellants has confined his arguments with regard to grant of future prospects as well as use of higher multiplier. Such arguments seem to have merit.

The Tribunal had taken age of the deceased to be 58 years and his monthly income was assessed to be Rs.8,000/-. However, no addition towards future prospects was made. In view of judgment ***National Insurance Company Limited vs. Pranay Sethi, 2017 (4) RCR (Civil) 1009***, when the deceased was between the age of 50 to 60 years and was self employed, then an addition of 10% should be made towards future prospects. By making an addition of 10% towards future prospects, the amount is worked out to Rs.8,000 + 800 = Rs.8,800/- .

Keeping in view the number of claimants- dependents, deduction of 1/4th is to be made towards personal and living expenses of the deceased. Doing that, the monthly dependency of the legal representatives is worked out to Rs.8,800 – 2,200 = Rs.6,600/- and the annual dependancy comes to Rs.6,600 x 12 = Rs.79,200/-.

The Tribunal has used multiplier of 7 in this case. However, in view of the judgment ***Smt. Sarla Verma vs. Delhi Transport***

Corporation 2009 (3) RCR (Civil) 77, when the deceased was in the age group of 56-60 years the multiplier of 9 should be applied. By doing that, the total dependency is worked out to Rs.79,200 x 9 = Rs.7,12,800/-.

By adding a sum of Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium, the total compensation amount comes out to Rs. 7,12,800 + Rs.15,000 + Rs.15,000 + Rs.40,000 = Rs.7,82,800 /-, whereas the Tribunal has awarded compensation of Rs.6,54,000/-.

In that way, the additional compensation of Rs. 1,28,800/- (Rs.7,82,800 – 6,54,000), is awarded to the claimants, payable by all the three respondents, jointly and severally, with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. In terms of the original award, the respondent – Insurance company shall have a right to recover the amount paid by it to the claimants awarded by the Tribunal and the additional compensation awarded by this Court. The apportionment of compensation and mode of payment shall remain the same as given in the impugned award.

In that way, the appeal is allowed, with costs.

(H.S. Madaan)
Judge

9.5.2023
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No