IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2643-2018(O&M) with
XOBJC-61-2021(O&M)
Date of decision:-3.2.2023

Satpal and another

...Appellants

Versus

Vinod Kumar and another

...Respondents

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

Present: Mr.Rajiv Kumar Saini, Advocate
for the appellants.

Mr.Lalit Garg, Advocate
for respondent No.2.

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H.S. MADAAN, J.

**CM-11230-CII-2021 in
XOBJC-61-2021 in
FAO-2643-2018**

For the reasons mentioned in the application, the same is allowed and cross-objections filed on behalf of respondent No.2 are taken on record.

**FAO-2643-2018(O&M) with
XOBJC-61-2021(O&M)**

1. On account of unfortunate death of Rajender in a road side

accident, which took place on 13.5.2016 near Gate No.2 of Grain Market, Indri, statedly on account of rash and negligent driving of Canter bearing registration No.DL-1M-6708 (hereinafter referred to as the offending vehicle) by respondent No.1 Vinod Kumar, parents of deceased, namely, his father Satpal, aged about 42 years and mother Sudesh aged about 44 years, both residents of village Naurta, Tehsil Indri, District Karnal had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Vinod Kumar – driver-cum-owner and National Insurance Company Ltd. Karnal – insurer of the offending vehicle.

2. After contest that claim petition was adjudicated by Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the Tribunal) and vide award dated 18.11.2017, the claim petition was accepted and compensation of Rs.16,20,700/- was granted to the claimants with interest and cost, payable by both the respondents jointly and severally.

3. Feeling dissatisfied with the amount of compensation awarded, the claimants have filed an appeal before this Court, notice of which was given to the respondent No.2 – insurance company, which has put in appearance through counsel. Cross-objections on behalf of the insurance company have also been filed seeking setting aside/modification of the impugned award.

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

5. In this case, the Tribunal considering the age of the deceased to be 21 ½ years on the basis of date of birth as mentioned in Aadhar card

Ex.P1 being 1.1.1995 and taking notional income of the deceased as Rs.10,520/- per month in light of the wages payable to labourer in the year 2016-17 as per administrative order issued by Deputy Commissioner, Karnal. 40% of the amount was added towards future prospects, in that way, monthly income of the deceased was worked out to be 14,728/-, and annual income Rs.1,76,736/-. Considering the fact that the deceased was a bachelor, 50% of the amount was deducted as personal and living expenses of the deceased, in that way the dependency of his parents i.e. the claimants was worked out to be Rs.88,368/-. The multiplier of 18 was rightly applied resulting in calculation of total compensation payable as Rs.15,90,624/-.

6. Under the conventional heads i.e. loss of love and affection to parents, funeral expenses and loss of estate, the Tribunal has awarded Rs.30,000/- to the claimants. The total compensation as such came out to be Rs.16,20,624/-, rounded of Rs.16,20,700/-.

7. However, the legal position in that regard has been clarified in subsequent judgment by the Apex Court i.e. ***Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333***, wherein it was observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)***, which provides that while working out the compensation payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000/-, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

Doing that the compensation comes out to be Rs.17,00,624/- (15,90,624+40000+40000+15000+15000).

8. In this way, the enhanced amount comes out to Rs.79,924/- (17,00,624 – 1620700).

9. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the filing of the claim petition till realization of the amount. The amount shall be apportioned among both the claimants in equal shares i.e. 50% each.

10. With such modification, FAO-2643-2018 filed by the claimants is allowed partly with costs.

11. As regards the cross-objections filed by the insurance company contending that the income of the deceased assessed by the Tribunal is on the higher side. According to the cross-objector – insurance company the Tribunal fell in error in considering the DC rates prevalent at that time, which were Rs.10,500/- rather than minimum wages prevalent in Haryana for unskilled worker, which were to the tune of Rs.8,000/- per month. Learned counsel for the insurance company has argued on those lines and has placed reliance upon judgments i.e. ***Kirti & Anr. etc. Versus Oriental Insurance Company Ltd., 2021(1) RCR(Civil) 478*** and ***Govind Yadav Versus The New India Insurance Company Ltd., 2011(4) RCR(Civil) 817***.

12. Whereas learned counsel for the appellants/claimants has vehemently contested such plea put forward by the counsel for the insurance company.

13. I find that while assessing income of the victim of a road side

accident when direct evidence in that regard is missing or not available then some guesswork is involved in doing so. The minimum wages payable to various categories of workers in the State as declared by the State Government as well as the Deputy Commissioner rates prevalent at that time provide some guidance and indication as regards the probable income of the deceased as per the category applicable to him/her. Such rates cannot be taken to be binding upon the Tribunal/Court while assessing the income of the deceased. While assessing the income of the deceased the Court is to consider various factors like social and economic background of the deceased; his/her educational qualifications; whether he was technically qualified or not; the type of work, which he was allegedly doing etc.

14. Under the circumstances the Tribunal had not done anything wrong in relying upon the DC rates for payment to the workers at the relevant time. The judgments referred to by learned counsel for the cross-objector/insurance company are not applicable due to different facts and circumstances of the case and the context in which such observation had been made.

15. Since the compensation awarded by the Tribunal has been enhanced by partly allowing FAO-2643-2018 filed by the claimants, XOBJC-61-2021 filed by the insurance company seeking reduction of compensation awarded by the Tribunal is bound to fail and is dismissed accordingly.

Since the FAO-2643-2018 filed by the appellants/claimants stands allowed partly and XOBJC-61-2021 filed by the insurance company stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.2.2023 **(H.S.MADAAN)**
Brij **JUDGE**

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