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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2884-2018 (O&M)
Date of decision: 08.05.2023

SUKHWINDER KAUR AND OTHERS ...Appellants

VS

SHANKEY AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Ekta Thakur, Advocate and
Ms. Diksha Garg, Advocate,
For the appellants.

Mr. Joginder Singh Dhankar, Advocate,
For respondent No.2.

Mr. Nigam K. Bhardwaj, Advocate,
For respondent No.3-Insurance company.

None for respondent No.1, despite service.

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ARUN MONGA, J. (ORAL)

Little did father of Amandeep Singh, who was all of 23 years old young man, know that the Hyundai Verna Car he entrusted to his son for earning money as a taxi would ultimately become the cause of his son's tragic demise in an accident involving the same vehicle. Aggrieved by inadequacy of compensation, the claimants (parents and younger brother of deceased) have assailed herein an Award dated 08.01.2018 rendered by learned Motor Accidents Claims Tribunal, Chandigarh (for brevity, "Tribunal"), seeking enhancement thereof.

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. As per the claim petition the brief facts are that Amandeep Singh, aged 23 years, a Driver, earning Rs.25,000/- per month after meeting the expenses of car No.PB-65-AE-7761 which was attached with Joint Commissioner of Income Tax,

> *Chandigarh, died on 2.5.16 due to injuries sustained in a road accident on the same day at about 2.00 PM when the car bearing registration No.HR-03-S-3400 (hereinafter referred as offending vehicle) being driven by respondent No.1 in a rash and negligent manner struck against his car when the deceased was driving his car No.PB-65-AE-7761 the side of Govt. College of Girls Sector 42 towards Hotel Bekano Sector 42, Chandigarh. The deceased was taken to PGI but succumbed to the injuries on the same day at about 6.22 PM. A criminal case vide FIR NO.92 dated 2.5.16 under Section 279, 337 IPC was registered at Police Station Sector 36, Chandigarh regarding the said accident. The present claim petition has been filed against the driver, owner and Insurer of the offending vehicle claiming compensation of Rs. 50.00 Lakhs (Rupees Fifty Lakhs only).”*

3. Upon notice, respondents No.1 and 2 filed joint written statement denying factum of accident as well as involvement of vehicle in question. It was averred that no such accident took place due to negligence on the part of respondent No.1while driving the car in question. A false FIR was lodged against respondent No.1. Petition was filed on the basis of false and concocted story. It was also pleaded that respondent No.1 was having a valid and effective driving licence and car in question was insured with respondent No.3 at the relevant time. Rest of the averments of the claim petition were also denied.

3.1 Respondent No.3-Insurance Company in its written statement *inter alia* raised objections that there was no cause of action to institute the claim; the driver of the car was not holding a valid driving license; claim petition suffered from non-joinder and mis-joinder of necessary parties.It was pleaded that respondent No.1 was not holding valid and effective driving licence to drive the car in question at the time of accident and that respondent No.2 had violated the terms and conditions of insurance policy. All the averments of the claim petition were also denied.

4. Replication was not filed. Based on rival pleadings, learned Tribunal framed the following issues:

> *"1. Whether Jasbir Singh died on account of injuries sustained in road side accident which took place due to rash and negligent driving of respondent No.1, driver of vehicle bearing registration No.HR-03-S-3400 ?OPP*
> *2. Whether the claimants are entitled for compensation, if so, at what amount and for whom ?OPP.*
> *3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of the accident? OPR.*
> *4. Relief."*

4.1. Vide order dated 24.11.2017, Issue no.1 was re-framed as under:

> *"1 Whether Amandeep Singh son of Sh.Jasbir Singh died on account of injury sustained in road accident which took place due to rash and negligent driving of respondent No.1, driver of vehicle bearing registration No.HR-03-S-3400?OPP."*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 and 2 in favour of the claimants and against the respondents. Issue No.3 was decided against respondent No.3. Consequently, compensation of Rs.15,42,000/- was computed and awarded in favour of claimants along with interest @ 7.5 % per annum from the date of filing of the claim petition till its realization. All the respondents were held liable to pay the compensation jointly and severally and respondent-Insurance Company was to indemnify the owner and deposit the compensation amount.

6. Learned counsel for claimants would argue that learned Tribunal wrongly assessed income of the deceased as Rs.10,000/- instead of Rs.39,000/- by observing that deceased was merely a driver and vehicle was in the name of his father. She submits that even if the vehicle was in the name of his father, appellants/claimants have proved his income by way of agreement (Ex. P-13) of being attached with the office of Joint

Commissioner Income Tax which was duly signed by him as well as the Income Tax department. The same being part of the government record, it cannot be denied that the deceased was earning Rs.39,000/- per month. She further submits that learned Tribunal has given compensation on account of loss of estate and funeral expenses @15,000/- each instead of Rs.16,500/- each. She further submits that nothing has been awarded on loss of consortium.

7. Per contra, learned counsel for respondent No.3-Insurance Company opposes the prayer of appellants and submits that respondent No.1 was not holding valid and effective driving licence at the time of accident and respondent No.2 has violated terms and conditions of the Insurance Policy. He would further canvass that insurance company cannot be fastened with any liability.

8. Having heard rival contentions and on perusal of impugned award, I find that the submissions made herein by learned counsel for respondent No.3, as noted in para-7 above, were also raised before learned Tribunal which were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. Respondent No.3 has not filed any appeal or cross objections in the case.

9. Having perused the impugned award, evidence adduced by the claimants on record *qua* the income clearly establishes that the deceased was receiving a lumpsum of Rs.39,000/- per month which included his income as well as maintenance of the Verna car, which was being provided to the department on contractual basis. There was no loan outstanding against the

Verna car as the same was owned by father of the deceased as per Exhibit, which is the registration Certificate of the vehicle. In any case, same has not been disputed by the Insurance Company before learned Tribunal.

10. In the premise, by reasonable guesstimate, I am of the view that the maintenance of Verna car including petrol as well as usage of the gasoline for being part of contract would not exceed 20 to 25 thousand per month. Needless to say, rest of the money was income at the hands of the deceased, which is accordingly being assessed once again on the basis of a reasonable guesstimate to be as Rs.15,000/- per month.

11. In the premise and applying the principles laid down in cases of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another,*** reported in ***2009 (3) The Punjab Law Reporter 22, National Insurance Co. Ltd. v. Pranay Sethi,*** reported in ***(2017) 16 SCC 680 read with Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others,*** reported in ***2019 (3) SCC (Cri) 153,*** I am of the view that computation of compensation under various heads is determined/ modified as below:

Name of the deceased	Amandeep Singh
Date of accident	02.05.2016
Age	23 years
Income	Rs. 15,000/-
Future prospects @ 40%	Rs.6000/-
Loss of dependency @ 50%	Rs.21,000/-Rs.10,500/- Rs. 10,500/-
Multiplier	18
Annual income	Rs. 10,500 X 12 X 18=22,68,000
Expenses incurred on transportation, funeral and last rites	Rs. 16,500/-
Loss of estate	Rs. 16,500/-
Loss of consortium (Parents and younger brother)	Rs.44, 000 x 3=1,32,000/-
Total	Rs.24,33,000/-

Already awarded by learned Tribunal	Rs.15,42,000/-
Enhanced amount of compensation	**Rs.8,91,000/-**

12. Accordingly, enhanced compensation shall be payable to the claimants along with interest, as awarded by learned Tribunal, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Enhanced compensation amount after adjusting the compensation, if any, already paid, be disbursed to claimants in terms of the apportionment as already determined by learned Tribunal.

13. Disposed of accordingly.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

08.05.2023
Vandana

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