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2023:PHHC:077518
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-9664-CII-2023 in/and
FAO-8202-2017 (O&M)
Date of decision: 24.05.2023

Pinky Sharma and others

...Appellants

VS

Raj Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Harminder Singh, Advocate,
For the appellants.

Mr. Sunil Agnihotri, Advocate,
For respondents No.1 and 2.

Mr. Ram Avtar, Advocate,
For respondent No.3.

ARUN MONGA, J. (ORAL)

CM-9664-CII-2023

Application is allowed, as prayed for.

Document (Annexure A-1) is taken on record, subject to all just exceptions.

Main case

Aggrieved by inadequate compensation, the claimant has assailed herein an Award dated 27.01.2017 rendered by learned Motor Accidents Claims Tribunal, Pathankot (for brevity, "Tribunal"), seeking enhancement thereof.

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

"2. Brief facts of the case of the petitioners are that on 24.09.2015 deceased Sukhdev Raj was going from his place of work i.e., AB Stone Crusher village Chack Chimna to his village Sidhpur (Fakarpur) by driving his motor-cycle make Bajaj Platina at a very slow speed and on the correct side of the road. At about 10.45 PM when he reached near New Chakki Bridge Abadgarh, a tipper bearing noPB-07-AB-7188, which was being driven by respondent no.1 in a rash and negligent manner and also in a high speed, without giving indicator has turned his tipper

suddenly to the right side as a result of which the motor-cycle of the deceased collided with the said tipper due to which Sukhdev Raj suffered multiple serious injuries on his person and died at the spot. The motor-cycle was also crushed. Respondent no.1 along with tipper had ran away from the spot. The said accident took place in the presence of Dharam pal brother of the deceased who was coming along with the deceased on another motor-cycle. Thereafter government Ambulance reached at the spot and deceased was shifted to civil hospital Pathankot. Postmortem on the dead body was conducted at civil hospital Pathankot.

3. The claim-petitioner further averred that the accident took place due to rash and negligent driving of the said tipper by respondent no.1. Dharam Pal made a statement to the police on the basis of which FIR no.53 of 25.09.2015, under Section 304-A, 279, 427 IPC was registered against respondent No.1.”

3. Upon notice of the claim petition, respondents No.1 and 2 filed joint written statement denying factum of accident. It was averred that no such accident took place due to negligence on the part of respondent No.1. Rest of the averment of the claim petitions were also denied.

3.1 Respondent No.3-Insurance Company in its written statement also denied the factum of accident. It was pleaded that respondent No.1 was not holding valid and effective driving licence at the time of accident and that respondent No.2 had violated the terms and conditions of insurance policy. All the contrary averments in the claim petition were denied too.

4. Based on rival pleadings, learned Tribunal framed the following issues:

- “1. Whether Sukhdev Raj died in an accident occurred on 24.09.2015 at about 10.45 PM due to rash and negligent driving of tipper bearing no. PB-07-AB-7188 by respondent no.1? OPP*
- 2. Whether the claim petitioners are entitled to compensation, if so to what extent and from whom? OPP*
- 3. Whether the driver of the tipper was not having a valid and effective driving licence at the time of accident and tipper was being plied without valid documents, if so its effect? OPR*
- 4. Whether the vehicle was being plied without route permit and fitness certificate? OPR*
- 5. Whether the claim petition is not maintainable? OPR*
- 6. Relief.”*

5. On appraisal of record/evidence, learned Tribunal decided issues No.1 to 5 in favour of the claimants and against respondents. Consequently, compensation of Rs.8,83,200/- was computed and awarded in favour of claimants.

6. I have heard competing contentions of both learned counsels and have gone through case file with their assistance.

7. Learned counsel for the appellant submits that licence in question Ex.C-11 clearly states that the same has been issued for driving MCWG/LMV-GV/TRANS, which was validly issued by the licencing authority, Gurdaspur, and the same includes the authorization to drive JCB Machine.

8. The said assertion of learned counsel seems to be correct, as is also borne out by an independent verification of the same vide a certificate dated 17.05.2023 (Annexure A-1) issued by the same very licencing authority i.e., Secretary, Regional Transport Authority, Gurdaspur stating in no uncertain terms that the licence holder in question i.e. deceased Sukhdev Raj was authorized to drive JCB Machine under the category of licence issued to him. The said certificate (Annexure A-1) has been issued by a competent authority. There is nothing on record to dispute the same.

9. In the premise, I am of the view that learned Tribunal fell in grave error in returning the finding that the deceased was not authorized to operate/drive JCB machine. That apart, it is not disputed that he was not employed as JCB driver, as has been specifically testified by his employer Amandeep Sharma, whose testimony as PW-2 has remained unimpeached.

10. It is only because the licence was disbelieved by the learned Tribunal that it did not give the benefit to appellants of deceased being a skilled employee despite his working as such. The salary certificate of deceased (Ex.C-

13) has also remained unchallenged and unimpeached, as was produced by the employer himself.

11. Learned counsel for respondent-Insurance Company also made a feeble attempt to challenge validity of the licence on the ground that same was issued on 21.01.2017 and was valid up to 31.12.2031 as on the date of accident i.e., on 24.09.2015, deceased was not having a valid driving licence.

11.1. The said argument is also as non-palatable as it can be, as it suffers from inherent insipidity, as would be borne out from the bare perusal of the licence which was originally issued on 11.02.2011 and it is only the renewal of the same which was carried out on 21.01.2017. The said argument is, therefore, rejected summarily.

12. Learned counsel for respondent-Insurance Company further states that other than the salary certificate, no other supporting record was produced by appellants and, therefore, the same cannot be believed.

12.1. I am unable to persuade myself to agree with the said proposition. It was open to Insurance Company to challenge the said salary certificate either in its cross-examination when the employer/proprietor appeared in witness box as PW-2 and/or by asking for the supporting documents *qua* the said salary certificate. It is only for the first time that respondent-Insurance Company has turned around to say that no other document was produced in support of the salary certificate. Once the salary certificate remained unimpeached, there was no occasion, in any case, for the claimants and/or the employer to bring any further material in support thereof.

12.2. It is also made clear that in case Insurance Company subsequently finds that Annexure A-1 is not valid document, it is at liberty to file an appropriate application before this Court to seek recovery from the owner of the offending vehicle.

13. In the premise, it is held that appellant was indeed working as a JCB driver, which is highly skilled nature of job and salary certificate depicts that he was earning a fixed salary of Rs.22,000/- per month and in addition, he was also being paid Rs.200/- per round for crushing material deposited in the job machine. It is not clear as to whether it was on month-to-month basis and how much was he earning on the basis of Rs.200/- per round, as aforesaid.

14. Neither claimants produced anything on record in support of the additional income other than the fixed income of Rs.22,000/- per month nor employer produced any document but merely on oral testimony, it was claimed that deceased was earning additional Rs.18,000/- apart from the fixed salary of Rs.22,000/-, thus making a total of Rs.40,000/- per month.

15. To that extent, there has been no clear evidence on record. However, given that excavation of the crushing material was on every day basis, it is safe to assume that the driver was doing one round per day for depositing the crushing material, as aforesaid and thus earning an additional Rs.200/- per day apart from fixed salary of Rs.22,000/-. Applying the formula, notional income of deceased is assessed as Rs.28,000/- (i.e. Rs.22,000/- + Rs.6000/- (Rs.200/- x 30).

16. To sum up, in the light of discussion above, the revised computations of compensation are being carried out in terms of the Apex Court judgments in the cases of “**Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**”¹, “**National Insurance Co. Ltd. Vs. Pranay Sethi**”², read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**”³ as below:

Name of deceased	Sukhdev Raj
Date of accident	24.09.2015
Age	33 years

¹2009 (3) The Punjab Law Reporter 22

² (2017) 16 SCC 680

³ 2019 (3) SCC (Cri) 153

Income	Rs.28,000/-p.m.
Future prospects @ 40%	Rs.11,200/-
Total	Rs. 39,200/-
Deduction in dependency 1/4 th for personal expenses	Rs.9,800/-
Loss of dependency	Rs.29400 (39,200-9,800)
Multiplier 16	Rs. 29,400 X 12 X 16=56,44,800/-
Loss of consortium @ 44,000 x 4	Rs.1,76,000/-
Funeral expenses	Rs. 16,500/-
Loss of estate	Rs. 16,500/-
Total	RS. 58,53,800/-
Compensation awarded by learned Tribunal	Rs.8,83,200/-
Enhanced amount of compensation	Rs. 49,70,600/-

17. Accordingly, the impugned award is modified in terms of the above computations. The enhanced compensation be paid, with interest @ 7% p.a. with effect from date of filing claim petition, to the claimants after deducting what has already been paid, within a period of 2 months failing which compensatory interest @ 3% per annum shall be leviable in addition to what has already been awarded from the date of filing of claim petition till payment. Enhanced compensation be disbursed as per apportionment below:-

- Appellant No.1 Pinky Sharma (widow)50%
- Appellants No.2 and 3 Bhuminka Sharma and Gaurav Kalia (minor daughter and son)15% each
- Appellant No.4 Kamla Devi (mother)20%

18. Disposed of accordingly.

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

(ARUN MONGA)
JUDGE

24.05.2023
vandana

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No