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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Reserved on:- 22.09.2023

Pronounced on:- 16.10.2023

Joginder and others

...Appellants

Versus

Surender and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. S.S. Shekhawat, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No. 2 - Insurance Company.

AMARJOT BHATTI, J.

1. The appellants/claimants – Joginder husband, Navneet son, Amit (minor) son and Asha daughter have filed the present appeal for enhancement of compensation awarded by learned Motor Accident Claims Tribunal, Jhajjar vide impugned Award dated 28.02.2017 vide which the claimants have been awarded compensation to the tune of Rs. 10,37,600/- along with interest at the rate of 7.5% per annum against the respondents No. 1 and 2, from the date of the filing of claim application till realization, who are liable jointly and severally, as detailed therein.

2. The facts of the case are that Joginder (husband of deceased Dharam Devi alias Luxmi), Navneet and Amit (sons of deceased Dharam Devi alias Luxmi) and Asha (daughter of deceased Dharam Devi alias Luxmi) filed claim petition under Section 166 of Motor Vehicles Act,

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1988 for grant of compensation of Rs. 40,00,000/- on account of death of Dharam Devi alias Luxmi in a motor vehicular accident on 19.07.2016. Late Dharam Devi alias Luxmi was about 48 years old at the time of accident. She was self employed, doing labour work, dairy farming and household work and was earning Rs. 20,000/- per month from all sources. On the fateful day of 19.07.2016, Dharam Devi alias Luxmi along with 3-4 other ladies were working as labour/sweeper near V.C. Hotel on NH-10 in the area of P.S. City Bahadurgarh. At about 02:30/03:00 pm, when Dharam Devi alias Luxmi was crossing the road, a motorcycle bearing Registration No. HR-13K-4273 came from the side of Jakhoda, which was being driven by its rider in a rash and negligent manner and at a very high speed and struck against the victim. Due to the impact, Dharam Devi alias Luxmi and the motorcyclist fell down on the road and Dharam Devi alias Luxmi suffered grievous injuries. The Contractor namely Pardeep son of Sh. Randhir Singh under whom Dharam Devi alias Luxmi was working, was also present on the spot who noted down the number of motorcycle and also asked about the identity of motorcyclist, who disclosed his name as Surender son of Sh. Balwan. Thereafter, Pardeep took Dharam Devi alias Luxmi to General Hospital, Bahadurgarh and from there she was referred to PGIMS, Rohtak where she succumbed to injuries on 20.07.2016. Regarding this accident, FIR No. 361 dated 20.07.2016 was registered under Section 304-A, 279 I.P.C. Police Station City Bahadurgarh. The claimants have filed this claim petition claiming compensation to the tune of Rs.40,00,000/- on account of death of late Dharam Devi alias Luxmi, from the date of accident till final realization of the amount, as detailed in the claim petition.

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3. The claim petition was contested by respondents No. 1 and 2. In the written statement filed by respondent No.1, preliminary objections regarding maintainability, locus standi, petition being vague and incomplete were taken. On merits, it was admitted that respondent No. 1 is the owner-cum-driver of motorcycle bearing No. HR-13K-4273. However, it was denied that the said motorcycle was involved in the alleged accident. It was further admitted that the vehicle of respondent No. 1 is insured with respondent No. 2. The local police in collusion with petitioner has falsely registered the FIR against the answering respondent. Remaining averments were denied for want of knowledge. It was submitted that the claim application deserved dismissal with costs.

4. The Insurance Company – respondent No. 2 admitted the fact that the offending vehicle was insured with them. However, it is submitted that respondent No. 1 was riding the motorcycle in contravention of terms and conditions of insurance policy. He was not holding valid effective driving license at the time of alleged accident. Therefore, the Insurance Company was absolved of its liability to pay the compensation. The involvement and negligence of vehicle bearing No. HR-13K-4273 was specifically denied and it was submitted that the accident, if any was caused on account of contributory negligence of the deceased. The age, income and occupation of the deceased was also denied. It was also submitted that the claimants are not the legal heirs of the deceased and the petitioners were not dependent upon the income of deceased. On merits, all the averments as mentioned in the claim petition were denied by the answering respondent. However, it is submitted that the FIR in question was lodged with malafide intention just to grab the compensation. No

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accident took place as alleged in the claim petition. The claimants are not entitled to any compensation from the answering respondent. Hence, it was prayed that the claim petition may be dismissed with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 24.01.2017 :-

(1) Whether the accident, resulting into the death of Dharam Devi alias Luxmi wife of Sh. Joginder had taken place due to rash and negligent driving of vehicle i.e. motorcycle bearing Registration No. HR-13K-4273 by respondent No. 1? OPP

(2) If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP

(3) Whether respondent No. 1 was not holding valid driving license on the date of alleged accident and whether respondent No. 1 has contravened the terms and conditions of the Insurance Policy, if so its effect? OPR-2

(4) Relief.

6. In order to prove the claim petition, the petitioner/claimant No. 1 Joginder himself stepped into the witness box as PW-2 and deposed through his duly sworn affidavit Ex.PW-2/A. The petitioners/claimants also examined Pardeep, eye witness as PW-1. Learned counsel for the petitioners tendered documents i.e. copy of charge-sheet as Ex.P-5 and copy of challan under Section 173 Cr.P.C. as Ex.P-6 and closed the evidence.

7. In order to rebut the case of the petitioners/claimants, the respondents did not examine any witness. However, learned counsel for respondent No. 1 tendered documents i.e. copy of Learner's License as Ex.R-1, copy of Driving License as Ex.R-2, copy of Registration

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Certificate as Ex.R-3 and copy of insurance policy as Ex.R-4 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the claimants was allowed by passing impugned Award dated 28.02.2017 vide which the compensation was awarded to the tune of Rs. 10,37,600/- along with interest at the rate of 7.5% per annum, as detailed therein by holding the liability of both the respondents as joint and several. Feeling aggrieved of this Award, the present appeal has been preferred by appellants/claimants.

9. I have heard the arguments of learned counsel for the appellants/claimants as well as learned counsel for respondent No. 2 – Insurance Company.

The learned counsel for the appellants/claimants argued that the impugned Award dated 28.02.2017 passed by learned Motor Accident Claims Tribunal, Jhajjar was not justified as the quantum of compensation awarded by the Tribunal is towards the lower side. The claim petition was filed by Joginder husband and three children, out of which one of the child was minor at that time. The facts of the case indicate that the deceased victim Dharam Devi alias Luxmi was working with other 3-4 ladies as sweeper near V.C. Hotel on National Highway - 10 when the offending motorcycle bearing Registration No. HR-13K-4273 driven by respondent No. 1 hit against the victim. She fell down and received serious injuries and ultimately succumbed to the injuries on 20.07.2016. Therefore, the deceased victim was a working lady and she was also taking care of the house and the family. Therefore, the income of the deceased was wrongly assessed as Rs. 6,000/- per month. In-fact, her income should have been assessed to the tune of Rs. 25,000/- per month without any deduction.

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Similarly, the learned Motor Accident Claims Tribunal, Jhajjar has applied the multiplier of 13 whereas it should have been assessed with the multiplier of 17 considering the lifespan of the deceased. The learned counsel for the appellants/claimants also raised the issue that future prospects were wrongly considered as 30%, rather it should have been 50%. The compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar under conventional heads is also towards the lower side. Therefore, the claimants are entitled to enhanced amount of compensation and prayed that the impugned Award dated 28.02.2017 passed by the learned Motor Accident Claims Tribunal, Jhajjar may kindly be modified.

10. On the other hand, the learned counsel for respondent No. 2-insurance company raised the issue that compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar is fully justified considering the facts and the evidence on record. There is no proof regarding the income of deceased victim. She was doing labour work, therefore, her income was rightly taken up as Rs. 6,000/- per month. The future prospects were however considered towards the higher side. The multiplier was rightly applied considering the age of the deceased victim. Even the quantum of compensation awarded towards loss of consortium at the rate of Rs. 1 lac is also towards the higher side. It is submitted that appeal preferred by the appellants/claimants is without merits and compensation awarded by the Tribunal does not require any interference.

11. I have considered the arguments and have gone through the record. In this case, the appellants/claimants have only assailed the quantum of compensation awarded by the learned Motor Accident Claims Tribunal, Jhajjar, alleging that it was assessed towards the lower side. The

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claim petition is filed by the husband, two sons and a daughter out of which one of the son was minor, whereas, the daughter was already married. The claimants mentioned the age of deceased victim as 48 years. It is alleged that she was doing labour work, dairy farm and was looking after the house. She is mentioned as self employed. Her monthly income was mentioned as Rs. 20,000/-. In order to prove these facts, the claimants examined Joginder husband as PW-2 and one Pardeep Kumar as PW-1 who was eye-witness to the accident and as per his version, he was Contractor by profession and the deceased victim was hired by him along with others for doing labour work. I have gone through the statements of both the witnesses. Neither Pardeep Kumar PW-1 nor the husband of the deceased Joginder PW-2 could produce any documentary proof regarding the salary of the deceased victim. The facts of the case indicate that she was doing labour work. Therefore, her income was rightly assumed as Rs. 6,000/- per month in the year 2016, when the said accident took place. Therefore, considering these facts, I do not find any force in the argument advanced by learned counsel for the appellants/claimants that the income was assessed towards the lower side.

In the case in hand, the learned Motor Accident Claims Tribunal, Jhajjar awarded 30% increase in income towards future prospects which in my opinion is towards the higher side. By relying upon the authority cited in **2013(3) CivCC 15 Supreme Court of India**, in case titled “***Rajesh and others Vs Rajbir Singh and others***”, in case of self employed person the increase in income is 25% for those who are in the age group of 40-50 years. So far as 1/4th deduction towards personal expenditure and the multiplier of 13 are concerned, the same were rightly

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applied by the learned Motor Accident Claims Tribunal, Jhajjar, by relying upon the authority cited in **2009 ACJ 1298 Supreme Court of India**, in case titled “***Smt. Sarla Verma and others Vs Delhi Transport Corporation and another***”.

Considering these facts, the quantum of compensation is re-assessed, as referred above. By assuming the income as Rs. 6,000/- per month and by giving 25% increase in income i.e. Rs. 1500/-, the monthly income comes out to be Rs. 7500/- and annual income comes out to be Rs. 90,000/-. 1/4th income is deducted towards personal expenditure and the rest of the income comes out to be Rs. 67,500/- and with the multiplier of 13, the quantum of compensation comes out to be Rs. 8,77,500/-. In this case, Joginder lost his wife, whereas, the children lost their mother. Therefore, all of them are granted Rs. 40,000/- each towards loss of consortium and the amount comes out to be Rs. 1,60,000/-. The appellants/claimants are further granted compensation of Rs. 15,000/- towards loss of estate, Rs. 15,000/- towards funeral expenditure and the total amount of compensation comes out to be Rs. 10,67,500/-. However, the learned Motor Accident Claims Tribunal, Jhajjar awarded compensation of Rs. 10,37,600/-, which is slightly towards the lower side. Therefore, considering these facts, the claimants are entitled to the difference of amount i.e. Rs. 29,900/- (10,67,500/- - 10,37,600/-) from the respondent No. 2 as per the terms of Award. The appellants/claimants are entitled to receive enhanced amount of compensation by adjusting the compensation already received by them. The appellants/claimants are entitled to receive this amount with interest at the rate of 6% per annum from the date of filing of appeal till realization of amount. The enhanced

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amount of compensation be released in favour of appellant No. 1/claimant Joginder husband of the deceased victim.

With this observation, the appeal preferred by the appellants/claimants is accepted and the impugned Award dated 28.02.2017 passed by learned Motor Accident Claims Tribunal, Jhajjar stands modified.

The copy of record received from the Tribunal be sent back to the concerned quarter.

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

16.10.2023

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(AMARJOT BHATTI)
JUDGE

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