IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.131

Case No. : FAO-1732-2023 (O&M)
Date of Decision : February 08, 2024

Vikas .... Appellant
vs.
Kanta Devi and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Rakesh Sobti, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. Challenge in the present appeal is to the Award dated 02.03.2023, passed by learned Motor Accident Claims Tribunal, Amritsar (for short – the Tribunal), whereby claim petition filed by the respondents/claimants under Section 166 of the Motor Vehicle Act, 1988 (for short – the Act), for grant of compensation on account of death of Ramesh Kumar, has been partly allowed.

2. The brief facts, as culled out from the paper-book, are that on 22.03.2019, Ramesh Kumar (since deceased) and his son namely Atul Kumar (claimant/respondent no.2) were going to Railway Station, Amritsar. Ramesh Kumar was driving scooter bearing No.PB-02-DN-1171 while Atul Kumar was on separate Activa bearing No.PB-02-CT-9692. On the way near C-Block Market, a Mahindra Bolero car bearing No.PB-30-N-2556 (hereinafter referred to as – the offending vehicle), being driven by appellant

Vikas in a very rash and negligent manner and without blowing horn, came from back and struck behind the scooter of Ramesh Kumar, due to which he fell on the ground and received multiple injuries. The Bolero hit the pole by the side of the road. Scooter of Ramesh Kumar was damaged badly. After causing the accident, appellant ran away from the spot leaving his Bolero car behind. Injured Ramesh Kumar was taken to Guru Nanak Dev Hospital, Majitha Road, Amritsar, from where he was referred to Fortis Escort Hospital, Majitha Verka Byepass, Amritsar due to his serious condition. On the same day i.e. 22.03.2019, Ramesh Kumar died in the hospital. FIR No.45 dated 22.03.2019 under Sections 279, 337, 338, 427, 304-A IPC was registered at Police Station Ranjit Avenue, Amritsar. Since the claimants/respondents being widow, son and daughter were fully dependent upon deceased Ramesh Kumar, they filed claim petition under Section 166 of the Act in order to get compensation.

3. Upon notice, appellant appeared before the Tribunal and contested the claim petition by filing written statement. He denied the accident having taken place with his vehicle. He also alleged that false and frivolous story has been concocted by the claimants to get compensation as no name of driver of the vehicle was mentioned in the FIR. The earning capacity of the deceased was also alleged to be lower than what was considered by the learned Tribunal. So, prayer for dismissal of petition was made.

4. Having considered the rival submissions of both the parties, learned Tribunal framed issues in the following manner :-

"1) Whether Ramesh Kumar son of Shiv Ram

Sharma died in roadside accident which took place on 22.03.2019 at about 6 a.m. in the area near C-Block Market, Ranjit Avenue, Amritsar caused due to rash and negligent driving of Mahindra Bolero bearing No.PB-30-N-2556 by its driver/owner Vikas respondent no.1? OPP

2) Whether the claim petition is not maintainable? OPR

3) Whether the claimants are entitled to recover any compensation, if so, the amount and from whom? OPP

4) Relief."

5. After framing of issues, both the parties led their respective evidence and documents were tendered in support of documentary evidence. Thereafter, the learned Tribunal observed that Ramesh Kumar died due to injuries suffered by him in motor vehicular accident, caused by the appellant by driving his Mahindra Bolero car rashly and negligently. So, vide the impugned Award dated 02.03.2023, the appellant was held liable to pay compensation to the tune of Rs.24,73,000/- to the claimants, being driver-cum-owner of the offending vehicle and was directed to deposit the said amount with the Tribunal within a period of three months thereof, failing which the claimants would be entitled to get 7.5% simple interest per annum on the said awarded amount from the date of filing the claim petition till realization of whole compensation amount.

6. Learned counsel for the appellant has contended that as per averments of the claimants, the deceased was aged 58 years and was working as Regional Sales Manager on commission basis with Golden

Paints and Chemical Industries. Apart from this, from brokerage of sale/purchase and some other sources, he was earning Rs.75,000/- per month but the claimants have failed to prove such income of the deceased. So, income of deceased has been assessed on higher side.

7. It is further contended that no proof or document has been proved on record to show that the deceased was of 58 years of age at the relevant time. Mere pleading of claimants or mentioning of age as 58 years in the post-mortem report is not sufficient to hold it to be the correct age.

8. Learned counsel has further contended that learned Tribunal has rightly observed that Income Tax Return of the deceased cannot be taken into consideration for the purpose of disposal of claim petition in the light of credit entries as the entries against commission payments is fluctuating. There was no fixed amount of income credited in the account of the deceased. It was further argued that the learned Tribunal also disbelieved the statement of Harmandeep Singh (PW-2), partner of the company, where the deceased was working as none of the documents was accompanied by the certificate under Section 65-B of the Evidence Act. So, it was prayed that the impugned Award is liable to be set aside.

9. I have heard learned counsel for the appellant and perused the case file.

10. The Tribunal has taken the age of the deceased Ramesh Kumar as 58 years for assessing the compensation. In the post-mortem report also, his age is written as 58 years. Even in the Auto/Two Wheeler Loan Application Form (Ex.PW-4/A), his date of birth is written as 02.10.1960. A perusal of copy of his Aadhar Card (Mark-B) also shows his year of birth to be 1960.

In the Account Opening Form (Ex.PW-6/D), his date of birth is written as 02.10.1960. The accident took place on 22.03.2019. So, at the time of death, the age of deceased was 58 years 05 months and 20 days. Therefore, the learned Tribunal has rightly taken his age to be 58 years, for which multiplier of '9' has been adopted and that is completely in accordance with law, in view of the law laid down by Hon'ble Supreme Court in the case of **Sarla Verma and others vs. Delhi Transport Corporation and another** reported as **(2009) 6 SCC 121**.

11. The claimants examined Harmandeep Singh (PW-2), partner of M/s Golden Paints and Chemical Industries, who deposed that deceased Ramesh Kumar was working with them as Regional Sales Manager on commission basis from 14.01.2012 till his death i.e. 22.03.2019. He proved on record copy of ledger account (Ex.PW-2/A) containing entry regarding payments made to the deceased as commission. He also deposed that the payments were made by cheques after deduction of TDS. The account statements of deceased were proved on record as Ex.PW-5/B and Ex.PW-6/B with the HDFC Bank Branch, R.S.Tower, Amritsar. The income tax return of the deceased for the Assessment Year 2019-20 (Ex.P-7), shows his gross total income as Rs.8,36,220/-, while taking his business income to be Rs.5,98,623/- and income from other sources as Rs.2,37,597/-. Simiklarly, for the Assessment Year 2018-19 (Ex.P-4), his gross total income is Rs.6,32,363/-, while taking his business income to be Rs.4,85,008/- and income from other sources as Rs.1,47,355/-. However, the learned Tribunal has taken only Rs.30,000/- per month to be the income of deceased, which comes out to be Rs.3,60,000/- per annum. So, the same cannot be considered to be on higher side in any way.

12. In view of the above discussion, the Award passed by the learned Tribunal is completely in accordance with law and no ground is made out for any interference at the hands of this Court. So, the present appeal is without any merit and the same is accordingly dismissed in limine.

13. Pending applications, if any, shall stand disposed of along with this judgment.

February 08, 2024 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*