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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-3234-2007 (O&M)
Date of Decision : 25.07.2024

Ved Parkash & Others

....Appellants

VERSUS

Rajesh Kumar & others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Prashant Singh Chauhan, Advocate for the appellants.

Mr. Rajneesh Malhotra, Advocate for respondent No.2.

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred by the claimants/appellants against the award dated 06.01.2007 passed by the learned Motor Accident Claims Tribunal, Rewari (for short, 'the Tribunal'), whereby the claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the act') filed by the claimants/appellants was dismissed with costs.

UNDISPUTED FACTS

2. The brief facts of the case as stated in the claim petition are that on the evening of 20.06.2002, Daya Nand (deceased) son of Basti Ram, left his shop at Behror (Rajasthan) and was going on scooter No.HR-35-B-3751 towards village Gopipura. When he was near village Jalpias, his scooter struck against a fallen tree on Alwar-Behror road, resulting into the serious injuries to him. He was taken to a Hospital at Behror and ultimately he was admitted in Sawai Man Singh Hospital, Jaipur, where he died on 26.06.2002. A marag FIR (death report) at serial No.19 was recorded in Police Station Moti Dungri at Jaipur. Proceedings under Section



174 of the Code of Criminal Procedure were also conducted. It is further stated in the claim petition that the deceased was a Welder (Mistri) by profession and was earning Rs.3300/- per month. The claimants prayed for the grant of compensation from the owner and the insurer of the offending vehicle No.HR-35-B-3751.

3. On notice of the claim petition, respondent No.1 appeared and admitted that the deceased had taken his scooter, which met with an accident. Respondent No.2 filed reply wherein it denied the factum of compensation.

4. From the pleading of the parties, the Tribunal framed the following issues:-

1. Whether Daya Nand son of Shri Basti Ram had died in an accident involving a scooter bearing registration No.HR-35-B-3751 as alleged? OPP
2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to claim any compensation, if so from whom and what amount?OPP
3. Whether this petition is not maintainable? OPR-2
4. Whether the petitioners have no cause of action to file this petition? OPR-2.
5. Whether the deceased was not holding a valid and effective driving licence on the date of accident? OPR-2
6. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition of the claimants/appellants. Hence the claimants/appellants filed the present appeal.

**SUBMISSIONS OF THE COUNSELS**

6. Learned counsel for the appellants submit that the claim petition filed by the appellants-claimants under Section 163-A of the Act is dismissed on the ground that the claim petition was filed at Rewari whereas the claimants were residing at Alwar (Rajasthan). The second ground for dismissal of the claim petition was that the claimants failed to prove that deceased Daya Nand died due to accident which arose by the use of Scooter No.HR-35-B-3751.

7. *Per contra*, learned counsel for the respondent-Insurance Company argues on the lines of the award.

8. I have heard learned counsel for the parties and perused the record of the case.

ANALYSIS

9. A perusal of the record and bare reading of the judgment shows that:-

i) it has been noted that the owner of the offending scooter in his written statement admitted that he was the owner of the scooter in question and registration No. HR-35-B-3751 was allotted to the scooter after the accident. He further admitted that the deceased had taken his scooter, which met with an accident.

ii) the affidavit Ex. PW1/A of claimant Ved Parkash, wife of Sh. Dayanand (deceased) in the present claim petition shows that she is the resident of Rewari and the accident took place on 20.06.2002 at about 8.30-9.00 pm at Behror-Alwar Road. She further stated that after the death of her husband, she alongwith her children was residing at Rewari. There is no discrepancy in



her cross-examination. The claim petition was dismissed on the ground of disclosing the wrong address which shows that learned Tribunal has not considered the evidence on record while rejecting the claim petition on the ground of giving wrong address.

iii) the statement of Sunder Lal Ex.PW-2, in which he stated that on 20.06.2002 at about 9:00 pm, Daya Nand was going from Behror on a scooter and struck against a *Vilayati Kikkar* and received serious injuries on his head and other parts of the body of his person. Thereafter Daya Nand became unconscious and he immediately informed his family members. He was admitted for treatment at S.M.S. Hospital, Jaipur where he died after 5-6 days of the accident. He further stated that it was a stormy day, which caused falling of Kikkar tree. There is no discrepancy in his cross-examination as PW-2.

iv) in the affidavit of Rajesh Kumar-RW-1/A, who is examined as RW-1, has stated that on or about 15.06.2002, deceased Daya Nand had taken his scooter for the purpose of buying it as he required it for professional purpose. In his cross-examination, there is no discrepancy which could dent the case of claimants.

v) A perusal of Ex. P-A 'Inquest Report under Section 174 Cr.P.C. shows about the date of death to be 26.06.2002 at 12:30 am and the cause of death was "*sadak durghatna me aai choton*



se mritue” i.e. cause of death is injury caused due to road accident.

vi) Post Mortem report is Ex.P-B, wherein it was stated in the column of remarks by medical professional “*sadak durghatna me aai choton se mritue*”

vii) A perusal of the judgment shows that learned Tribunal has decided Issue No.2 in the following terms:-

“20. Regarding quantum of compensation, PW1 Ved Parkash widow, deposed as per her affidavit, Ex.PWI/A, that her husband Daya Nand was a MISTRI (Welder) and was earning Rs.3300/- per month. However, she did not place on the record any receipt or voucher or any other document to prove that her husband was a skilled worker and used to earn Rs.3300/- per month. In the absence of any definite evidence, it can be said that the deceased was a casual labourer. Even the minimum wages of a casual labourer these days are not less than Rs.2400/- per month. I assess his income at Rs.2400/- per month. Out of this, he must be spending 1/3 on himself. The loss of dependency is taken at Rs.1600/- per month. According to the deposition of the widow, the deceased was 30 years old. Applying a multiplier of 16, the compensation comes to Rs.3,07,200/- (Rs.1600X12X16). To it, a sum of Rs. 10,000/- is added on account of funeral expenses, loss of consortium and loss of estate. The total



compensation on account of death of Daya Nand comes to Rs.3,17,200/-. However, as issue No.1 is not proved, the claimants would not be entitled to claim any compensation from the respondents. This issue is held against the claimants.”

10. Hon'ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]** held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11, of which Section 164 of the Act provides for payment of compensation in the case of death to the tune of Rs.5 lakhs and in the case of grievous hurt to the tune of Rs.2.5 lakhs.

11. This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicles statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.

**CONCLUSION**

12. In view of the law laid down by the Hon'ble Supreme Court in the above referred to judgments, the present appeal is allowed. Accordingly, the award dated 06.01.2007 is set aside. The claimants/appellants are held to be entitled to compensation to the tune of Rs.5 lakhs, which shall be distributed equally amongst the claimants.

13. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 **Supreme Court Cases 107**, the appellants-claimants are granted the interest @9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

14. The Insurance Company is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest equally in the accounts of all the claimants/appellants. The claimants/appellants are directed to furnish the bank account details to the Tribunal.

16. Pending applications, if any, also stand disposed of.

July 25, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes