IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-1021-2016 (O&M)
Date of decision : 04.11.2024

Rajni and others ..... Appellants

versus

Satish Kumar and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Ritu Choudhary, Advocate for
Mr. Jarnail Singh Saneta, Advocate
for the appellants.

Mr. Sukhdev Singh, Advocate for
Mr. Vikram Singh, Advocate
for respondents No.1 and 2.

Mr. Ram Avtar, Advocate
for respondent No.3-Insurance Company.

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PANKAJ JAIN, J.

1. Claimants are in appeal. Challenge in this appeal is to the award dated 06.11.2015 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'Tribunal'). Appellants are seeking enhancement of compensation.

2. As per the claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as '1988 Act'), on 06.05.2012, deceased Des Raj and injured Munish Kumar were going on motor cycle No.HR-08G-9526. The motor cycle was being driven by deceased and Munish Kumar was the pillion rider. At about 11/11:30 p.m., when they reached near Nissing on Kaithal road, the offending

vehicle came from Karnal side which was being driven by respondent No.1 in rash and negligent manner and hit the motor cycle of the deceased by coming on the wrong side. Resultantly, both the passengers received multiple injuries and Des Raj died on the way to hospital.

3. Respondents No.1 and 2 filed joint written statement, whereas respondent No.3 i.e. insurance company filed a separate written statement and pleaded that driver of the vehicle i.e. respondent No.1 was not holding valid and effective licence and prayed for dismissal of the claim petition.

4. On the pleadings of the parties, the learned MACT framed the following issues:-

> "(1) Whether deceased Des Raj son of Mansa Ram had died and Munish Kumar had suffered injuries in a road side accident which took place on 6.5.2012 at about 11.00/11.30 in the area of P.S. Nissing, District Karnal, because of rash and negligent driving of the respondent no.1 being driver of the offending vehicle bearing NO.HR03H-1079? OPP.
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> (2) If issue no.1 is proved in affirmative, whether the claimants Smt.Rajni, Master Deepak, Hinanshi, Master Dheeraj and Sarupi Devi are entitled for compensation on account of death of Des Raj deceased and claimant Munish Kumar is entitled for compensation on account of injuries suffered by her, as alleged? If so to what extent, from whom and on what terms and conditions? OPP.
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> (3) Whether the respondent No.1 was not having valid and effective driving licence at the time of this accident and the offending vehicle was being plied in violations of terms and conditions of the policy, if so to what effect? OPR.
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> (4) Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect?OPR
>
> (5) Relief."

5. The Tribunal after analyzing the evidence accepted the claim petition and awarded compensation of Rs.8,17,032/- to claimant No.1 (wife), Rs.5,00,000/- each to claimains No.2 to 4 (minor children) and Rs.6,00,000/- to claimaint No.5 (mother) alongwith interest @ 8% per annum from the date of filing of the claim petition till realization.

6. Neither the owner and driver nor the insurance company has preferred any appeal. They have been held liable jointly and severally.

7. Counsel for the appellants has assailed the finding on issue No.2 by contending that the deceased was employed in Honda Company, Gurgaon, drawing salary of Rs.13,905/- per month, however the Tribunal has wrongly assessed the income of the deceased @ Rs.12,463/-. Thus, the income of the deceased needs to be enhanced from Rs.12,463/- to Rs.13,905/- per month for the purpose of computing compensation payable to the claimants. She further asserts that nothing has been paid as future prospects and a meager amount of Rs.1,00,000/- has been paid under the conventional heads which also needs modification.

8. *Per contra* counsel for respondent No.3 asserts that the Tribunal has rightly assessed the income of the deceased @ Rs.12,463/- per month as no evidence has been produced to show that the deceased was in fact employed as alleged and no documentary proof regarding his income was available.

9. Having heard learned counsel for the parties and after perusing the records of the case carefully, this Court is of the considered opinion that award passed by the MACT needs to be modified. Counsel for the

respondent-insurance company is right in asserting that income of the deceased cannot be assessed in the absence of original record of the employer. However, at the same time, it cannot be denied that evidence with respect to the deceased being employed is on record. Thus, the income of the deceased has to be assessed by deeming him to have been employed at the time of his death. Thus, the income of the deceased is assessed @ 13,905/- per month. The deceased being 30 years of age, the claimants are entitled for 40% future prospects as per the guidelines issued by the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others 2017 (16) SCC 680**. Loss of dependency has been calculated after applying 1/4th deduction which needs no modification. For loss of consortium, the appellants No.2 and 4 are entitled for Rs.48000/- each. Multiplier of 17 has been rightly applied as per **Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (6) SCC 121.** Rs.25,000/- has been awarded towards funeral expenses which needs no modification. Rs.15,000/- needs to be granted for loss of estate to appellants No.2 to 4.

10. As a sequel of the discussion made hereinabove, the appeal preferred by the appellants is disposed off. The award passed by the Tribunal is modified to the aforesaid extent. The amount shall be apportioned in the manner as held by the Tribunal in para 30 of the award. The claimants shall further be entitled for the interest calculated @ 8% per annum from the date of application till the date of actual realization as awarded by Tribunal. Needless to say what has already

been paid shall be adjusted.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

04.11.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No