(2018) 08 P&H CK 0435

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 9352 Of 2014, 249 Of 2015

Kulwinder Kaur & Another — APPELLANT

Vs

Vikramjit Singh & Others — RESPONDENT

Date of Decision : 16-08-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 08 P&H CK 0435

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Kewal Singh, Promila Nain, Harsh Aggarwal

Final Decision : Disposed Off

Judgement

Tejinder Singh Dhindsa, J

This order shall dispose of FAO-9352-2014 (Kulwinder Kaur & another Versus Vikramjit Singh & others) and FAO-249-2015 (United India Insurance Co. Ltd. Versus Kulwinder Kaur & others) as both these connected appeals arise out of award dated 19.08.2014 rendered by the Motor Accident Claims Tribunal, Ludhiana awarding a compensation amount of Rs.8,66,000/- along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization. The only issue arising in these two appeals i.e. one filed at the hands of the claimants and the other at the hands of the Insurance Company is with regard to quantum of compensation.

2. It would be apposite to take note that at the stage of filing of FAO-249-2015, the appellant/Insurance Company had taken a specific ground to assail the award on the ground that the driving license of the driver of the offending vehicle was valid only for the motorcycle/LMV/ LMV(GV) and there was no valid endorsement qua a tractor trolly and as such, had pressed for recovery rights but during the course of arguments today, Mr. Harsh Aggarwal, Advocate does not press such submission in view of the judgment passed by the Hon'ble Supreme Court in

Mukund Dewangan Versus Oriental Insurance Company Ltd., 2017 (4) RCR (Civil) 111.

3. Brief factual matrix that may be noticed is that a claim petition was filed under Section 166 of the Motor Vehicle Act claiming compensation to the tune of Rs.1 crore on account of death of Kuldeep Singh in a motor vehicle accident that took place on 09.06.2012. Claimants were the widow, minor daughter and aged mother of the deceased. It was asserted that deceased Kuldeep Singh was proceeding on a motorcycle and was struck by a tractor trolley bearing registration No.PB-37-D-0515 and which was being driven in a rash and negligent manner by the driver-Vikramjit Singh.

4. Claim petition having been contested, the following issues were framed by the Tribunal:

"1. Whether the claimants are the legal heirs of deceased Kuldeep Singh? OPP

2. Whether deceased Kuldeep Singh died due to the rash and negligent driving of Tractor bearing registration NO.PB-37D-0515 being driven by respondent No.1? OPP

3. If issue No.2 is proved in affirmative, whether the claimants are entitled to recover compensation, if so, from which of the respondents to what amount? OPP

4. Whether the respondent No.1 was not having valid or effective driving license and valid registration certificate? OPR-3

5. Whether the claim petition is not maintainable? OPR

6. Relief."

5. Insofar as issue No.1 was concerned, findings were returned in favour of the claimants and it was held that Kuldeep Singh had died on account of injuries suffered in the accident and it was on account of rash and negligent driving of Vikramjit Singh i.e. driver of the offending tractor trolley.

6. Insofar as quantum of compensation is concerned, the Tribunal has assessed the monthly income of the deceased to be Rs.4500/- per month. Age of the deceased has been accepted as 44 years and as was mentioned in the Post Mortem Report Ex.C3. Multiplier of 14 had been applied and the compensation amount was computed to be Rs.7,56,000/-. Towards loss of consortium, a sum of Rs.1 lakh has been awarded and Rs.10,000/- has been awarded under the heads of funeral expenses and transportation. The total compensation amount awarded, as such, is Rs.8,66,000/- and to be payable along with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization.

7. I have heard learned counsel for the claimant/appellants and Mr. Harsh Aggarwal, Advocate representing the contesting respondent/Insurance Company.

8. In the considered view of this Court, the compensation amount awarded in favour of the claimants would require to be re-assessed in terms of parameters

laid down by the Apex Court in Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77 and National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009.

8. It was the assertion made by the claimants in the claim petition that Kuldeep Singh (since deceased) was working as a driver with the private concern based in Kuwait and was earning Rs.1.50 lakhs per month. Since no cogent and credible evidence has been adduced on record to prove and substantiate the drawing of salary of Rs.1.50 lakhs per month, the Tribunal has taken the earnings to a daily wager/labourer to assess the monthly income of Rs.4500/- per month. In my considered view, the assessment of monthly income is much on the lower side.

9. Undoubtedly, no conclusive evidence in the shape of salary certificate etc. had been adduced on record to substantiate the plea of the deceased earning Rs.1.50 lakhs per month as a driver in Kuwait. Be that as it may, from a perusal of the original records of the case that were requisitioned, it becomes apparent that the deceased was working in the capacity of a driver. In taking such a view, this Court has noticed the driving license issued in the name of the deceased by the concerned authorities in Kuwait as also an identity card issued by the employer reflecting his status as a driver. The accident in question took place on 09.06.2012 and even the passport and travel ticket reflects that he had returned to India merely 2-3 weeks prior to the date of accident. Under such circumstances, the Tribunal ought to have been taken the income admissible to a skilled worker at the very least. Counsel for the claimants has even adverted to the bank account statements held in the name of the deceased for the period 2009-2012 and which indeed reflects some healthy deposits. Inference that can be drawn is that the deceased has been remitting certain amounts of money regularly to his wife/family. In the totality of circumstances, the monthly income of the deceased is assessed to be Rs.6500/- per month.

10. Perusal of the award dated 19.08.2014 would reveal that no deduction has been made by the Tribunal towards personal and living expenses of the deceased while assessing his monthly income. Keeping in view the uncontroverted factual premise that deceased was survived by a widow, minor daughter and aged mother and by applying the parameters laid down in Sarla Verma's case (Supra), a 1/3rd deduction is directed towards personal and living expenses.

11. Furthermore, this Court finds that the Tribunal has erred in accepting the age of the deceased as 44 years by merely adverting to the Post Mortem Report EX.C3. There was no occasion for the Tribunal to have discarded the documents adduced on record by the claimants themselves i.e. the passport as also his driving license which show the date of birth of the deceased as 27.10.1966. In other words, as on the date of accident i.e. 09.06.2012, the deceased was more than 45 years of age. Under such circumstances, the multiplier that is to be applied would be 13 instead of 14. It is so directed.

12. Tribunal, however, while computing the compensation amount has completely

overlooked the aspect as regards increase in income towards future prospects. Keeping in view the fact that the deceased was 46 years of age and was not on a permanent job. increase in income at the rate of 25% towards future prospects is awarded.

13. Even with regard to the conventional heads, the amount awarded by the Tribunal i.e. Rs.1,40,000/- is scaled down to Rs.70,000/- i.e. loss of estate, loss of consortium and funeral expenses by following the dictum laid down in Pranay Sethi's case (supra).

14. In view of the discussion above, the compensation amount is re-assessed as under:

Sr. No.

Computation/Head

Revised calculation

1.

Income Rs.6,500/-

25% increased towards future prospects i.e. 6500+1625=8125/-

2.

1/3rd deduction towards personal and living expenses of the deceased

8125 - 2708=5417/-

3.

Compensation after applying multiplier of 13

5417 x 12 = 65,004/- 65,004 x 13 =8,45,052/-

4.

Conventional Heads i.e. funeral expenses, loss of estate and loss of consortium etc.

Rs.70,000/- 8,45,052+70,000=9,15,052/-

5.

Total

Rs.9,15,052/-

15. The appellants would be entitled to interest at the rate of 6% per annum even on the enhanced compensation amount from the date of filing of the claim petition. The enhanced compensation so worked out would be apportioned in equal shares between the appellants herein. 50% share falling to the widow, namely, Kulwinder Kaur be released in her favour. The balance 50% share

towards minor daughter be deposited in a fixed deposit carrying maximum rate of interest and would be open to be released as and when appellant No.2 attains majority.

Both the appeal are disposed of in the aforesaid terms.

