(2018) 07 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 3603, 3797 Of 2013, Cross Objection No.31-CII Of 2014

National Insurance Co. Ltd — APPELLANT

Vs

Payal Bhola And Others — RESPONDENT

Date of Decision : 19-07-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 1 RCR(Civ) 1

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Jaideep Verma, Pardeep Goyal, Suveer Sheokand

Final Decision : Disposed Off

Judgement

This order shall dispose of FAO Nos.3603 of 2013 and Cross Objection No.31-CII of 2014 titled as National Insurance Company Limited Vs. Payal Bhola and others and FAO No. 3797 of 2013 titled as Ravinder Singh Vs. Payal Bhola and others as these matters arise out of the award dated 26.03.2013 passed by the Motor Accident Claims Tribunal, Ludhiana.

FAO No.3603 of 2013 has been preferred by the National Insurance Company Limited and cross objections have been filed by the claimants. The only question raised in these two matters is with regard to quantum of compensation.

Briefly, it may be noticed that the claim petition was filed under Section 166 of the Motor Vehicles Act by the widow and two minor children of deceased Vishal Bhola who is stated to have died in a motor vehicle accident on 12.04.2011. It was averred in the claim petition that Vishal Bhola (since deceased) and who was working with Sandhu Automobiles had gone to Stan Auto, G.T.Road, Ludhiana on 12.04.2011 to explore better job prospects. It was stated that while he was standing within the premises of Stan Auto and waiting to meet certain officials, a car bearing registration No.PB-10-DA-Temp-6887 being driven by Ravinder Singh came at a high speed and struck against Vishal Bhola and who succumbed to the injuries on the same very day. Case made out was that Vishal Bhola died on account of rash and negligent driving by Ravinder Singh i.e. driver of the offending vehicle and a compensation amount of Rs.30 lakhs was claimed.

Claim petition was contested by Ravinder Singh (respondent No.1) denying the accident itself even though admitting that he was serving as a Service Supervisor in Stan Auto, Ludhiana. Respondent No.2 in the claim petition, namely, Parveen Sharma i.e. owner of the vehicle did not put in appearance and was proceeded ex parte. The Insurance Company i.e. respondent No.3 also filed a written statement raising the objections that the car in question was not having valid registration certificate and even the driver did not have a valid driving licence at the time of accident and as such the Company was not liable to pay any compensation.

From the pleadings on parties, the following issues were framed by the Tribunal:-

1. "Whether deceased Vishal Bhola had died in a road side accident caused by respondent No.1 with rash and negligent driving PB 10DA T 6887? OPP.

2. Whether claimants are entitled for recovery of claim amount, if so, to what extent and from whom? OPP.

3. Whether petition is not properly verified? OPP

4. Whether petition is bad for non-joinder and mis-joinder of necessary parties? OPP.

5. Whether respondent No.1 was not possessing valid driving license, as such respondent No.3 is not liable? OPR

6. Relief."

On Issue No.1, the Tribunal recorded a finding against respondent No.1 and in favour of the claimants and held that Ravinder Singh was driving the car rashly and in a negligent manner and has caused the accident on account of which Vishal Bhola has died.

Insofar as Issue No.2 is concerned, the age of the deceased has been taken as 39 years based upon the statement of the widow PW-6 Payal Bhola as also the date mentioned in the PAN Card of Vishal Bhola Ex. P8. The annual income of the deceased has been assessed as Rs.1,02,500/- on the basis of income tax return adduced on record for the assessment year 2008-09. A cut off 1/4th towards personal expenses was applied. The enhancement of 50% towards future prospects of income has been allowed and by applying the multiplier of 16, a compensation amount of Rs.18,45,000/- was determined. Tribunal has also awarded a total amount of Rs.15,000/- towards loss of dependency, loss of consortium and funeral expenses. The total compensation amount awarded is Rs.18,60,000/- along with interest @ 12% per annum from the date of filing of the claim petition till final realization of the amount. The initial liability of such compensation amount determined has been fastened upon the Insurance Company but recovery rights have been given to the Insurance Company to recover the compensation amount from the driver and owner of the vehicle.

I have heard counsel for the appellant Insurance Company in FAO No.3603 of 2013 as also counsel for the claimants in the cross objections i.e. Cross Objections No.31-CII of 2014 and FAO No.3797 of 2013.

The submissions raised by learned counsel representing the appellant-Insurance Company that the deduction towards personal expenses of the deceased should be taken as

1/3rd instead of 1/4th is well founded. In the case of Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77, it was held that where the deceased was married the deduction towards personal and living expenses of the deceased should be 1/3rd in case number of dependent family members is 02 to 03 and 1/4th where the number of dependent family members is 04 to 06.

In the facts and circumstances of the present case, the number of dependents upon the deceased was three i.e. widow and two minor children. As such, the deduction towards personal and living expenses of the deceased ought to have been taken as 1/3rd. It is so directed.

The Tribunal has allowed enhancement of 50% towards future prospects of income. In the case of National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) RCR (Civil) 1009, it had been held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects should be granted where the deceased had a permanent job and was below the age of 40 years. It was further held that in case the deceased was self-employed or on a fixed salary, an addition of 40 % of the established income is warranted where the deceased was below the age of 40 years.

In the present case, the pleaded case of the claimants themselves was that the deceased was employed with Sandhu Automobiles Limited and had gone to Stan Auto to explore the possibility of better job prospects. As such the job of the deceased Vishal Bhola at Sandhu Automobiles cannot be taken as a permanent job. By applying the parameters/guidelines in Pranay Sethi's case (supra), the addition of 40% towards future prospects would be appropriate instead of 50% that has been granted by the Tribunal.

Insofar as income of the deceased is concerned, the Tribunal has assessed the annual income of deceased Vishal Bhola to be Rs.1,02,500/- on the basis of income tax return adduced on record for the assessment year 2008-09. The accident in question had taken place on 12.04.2011. The income tax returns for such relevant point of time were not adduced on record. There was no basis for the Tribunal to have discarded the evidence brought forth as regards net salary of the deceased to be Rs.15,500/- per month. In this regard, PW-4 Gurpreet Singh, Finance Manager, Sandhu Automobiles Private Limited had produced on record Ex. PW4/A to Ex. PW4/H to reflect the net salary of the deceased to be Rs.15, 500/-. Such evidence has gone unrebutted. Even assuming that in the latest income tax return, the deceased had not reflected such income, he would have made himself liable to the necessary penal action. For purposes of assessing compensation, the Tribunal ought to have taken the monthly income of the deceased to be Rs.15, 500/- on the basis of evidence adduced on record and which had gone unrebutted.

Tribunal while assessing compensation has applied the multiplier of 16. As per guidelines contained in the judgment rendered by the Apex Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77, a multiplier of 15 was to be applied since the age of the deceased was 39 years at the time of accident. Even counsel representing the claimants does not dispute such position.

It is noticed that the Tribunal has been frugal in having awarded a total sum of Rs.15,000/- towards the heads of loss of dependency, loss of consortium and funeral expenses. Such amount towards the conventional heads would stand enhanced to Rs.70,000/-.

In view of the discussion hereinabove the compensation in favour of the claimants is re-assessed as follows:-

Sr. No.

Head

Calculation

1.

Income Rs.15,500/- p.m.

Rs.15,500 + 40% future

prospects

=15500+6200=Rs.21700/-

2.

1/3rd deduction

towards

Rs.21700-7161=14,539/-

personal expenses of the

deceased

Rs. 14539 x 12=1,74,468/-

3.

Compensation

after

Rs. 1,74,468 x 15=26,17,020/-

applying multiplier of 15

4.

Conventional Heads: loss

Rs.70,000/-

of consortium,

loss

of

estate, funeral expenses

Total

Rs.26,87,020/-

The enhanced compensation as calculated hereinabove be released in favour of the widow/claimant, namely, Payal Bhola mother and natural guardian of the two minor children along with interest @ 6% per annum from the date of filing of the instant appeal and till the date of realization.

FAO No.3797 of 2013 has been preferred by the driver of the offending vehicle raising a plea that he was an employee of Stan Auto and the accident had occurred during the course of employment and as such Stan Auto is to be held vicariously liable regarding the act of an employee.

In this regard, it is observed that Stan Auto had not even been impleaded as a party in the claim petition. No issue in such regard had been framed and such question did not fall for determination before the Motor Accident Claims Tribunal. FAO No.3797 of 2013 is disposed of in terms of leaving such question/issue open and by granting liberty to the appellant Ravinder Singh to raise such claim as regards vicarious liability, if any, of Stan Auto Private Limited, Ludhiana by taking out appropriate proceedings in accordance with law.

FAO No.3603 of 2013 and Cross Objection No.31-CII of 2014 and FAO No.3797 of 2013 are disposed of in the aforesaid terms.