(2010) 05 P&H CK 0273

In the Punjab And Haryana At Chandigarh

Prem Narain — APPELLANT

Vs

National Insurance Company and Others
 Smt. Dhanpati Devi and Others Vs Rajbir Singh and Others — RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 279, 304A, 337

Citation : (2010) 05 P&H CK 0273

Hon'ble Judges : K.C. Puri, J

Bench : Single Bench

Judgement

K.C. Puri, J.—By this common order I intend to dispose of FAO No. 600 of 1999 titled as Prem Narain v. National Insurance Co. and Ors. and FAO No. 4190 of 2001 titled as Smt. Dhanpati Devi and Ors. v. Rajbir Singh and Ors. as both these appeals arise out of the same award and accident. Cross-objection No. 7-CII of 2002 has also been filed by claimants-respondents against the award dated 24.12.1998 for enhancement of the compensation amount. For convenience facts are being taken from FAO No. 600 of 1999.

2. Factual matrix comprising the claim petition shorn of details, is that on 5.1.1997 at about 5.30 PM, Hukam Chand (since deceased) and Bhagwan Dass were coming from Bahadurgarh and were going to Garnawathi to meet his relative on scooter bearing No. DL-IS-4/4918, which was being driven by Bhagwan Dass and deceased was the pillion rider. When they reached near Chulana Mor, a truck bearing registration No. HR-46/1097 came from opposite side at a high speed without blowing any horn and collided with the scooter, which was being driven by respondent No. 1. As a result of which, scooter rider fell on the road and received fatal injuries. It is alleged that after the accident, Bhagwan Dass became unconscious and was taken to Govt. Hospital, Rohtak, whereas Hukam Chand expired at the spot. The accident was witnessed by Sanjay Kumar s/o Chhatter Singh and Daya Nand son of Hukam Singh. The accident was solely due to rash and negligent driving of respondent No. 1.

3. First information report No. 11 dated 5.1.1997 under Sections 279/337/304A of the Indian Penal Code (in short - the IPC) Police Station Sampla, District Rohtak, was lodged by Sanjay Kumar son of Chhater Singh, against respondent No. 1 Rajveer Singh.

4. The petitioners have claimed compensation to the tune of Rs. 5,00,000/- on account of loss of income, love and affection, sufferings shock and pains, loss of consortium and funeral expenses due to death of deceased. The petitioners have stated that deceased Hukam Chand was 48 years at the time of death and was an employee of Haryana State Electricity Board and drawing monthly salary of Rs. 4500/- per month.

5. In the written statement filed by respondents No. 1 and 2, preliminary objection that petition is bad for non-joinder of parties is raised. On merits, it is stated that a false case was got registered against respondent No. 1 in collusion with police. It is alleged that in fact scooter is the offending vehicle as the answering respondent was driving the truck No. HR 46/1097 with normal speed on the left side of the road. The scooterist alongwith pillion rider was driving scooter rashly and negligently at a very fast speed and without observing traffic rules. He tried to overtake roadways bus but coming ahead of scooterist, in the process of overtaking the roadways bus, the scooterist brought his scooter on the wrong side of the road. The answering respondent tried his best and brought his truck on kacha portion on the left side of the road while going from Rohtak to Bahadurgarh. This accident has been caused solely due to rash and negligent driving of the scooter driver. It was prayed that the petition be dismissed qua the answering respondents.

6. In the written statement filed by respondent No. 3, i.e. the Oriental Insurance Co. Ltd., it is pleaded that truck was not insured on the date of accident and as such claim petition is liable to be dismissed. It is stated that in any case, if it is found that the truck No. HR 46/1097 was insured with the answering respondent in that case also the answering respondent cannot be asked to honour any award unless and until the same is passed in accordance with the provisions of Motor Vehicle Act. The answering respondent has no liability to pay the compensation, if any, as the respondent No. 2 i.e. the owner of the truck had no contract of insurance. It is stated in the alternative that respondent No. 2 has violated the terms and conditions of the Insurance Policy by not informing the answering respondent of the alleged accident. It is stated that truck No. HR 46/1097 was not insured with the answering respondent as such the answering respondent is unnecessary party and the claim petition is liable to be dismissed. In the alternative accident if any had taken place on account of rash and negligent driving of the scooterist and on account of negligence of deceased himself. In the end it is prayed that petition be dismissed.

7. On the pleadings of the parties, the following issues have been framed:

1. Whether the accident in question had taken place, on account of rash and

negligent driving of truck No. HR 46/1097, by its driver Rajveer Singh, respondent? OPP

2. To what amount of compensation, if any, the petitioners are entitled to and if so, from whom? OPP

3. Whether the respondents are not liable to pay any compensation, in view of the various preliminary objections, raised by them, in their respective written statements? OPR

4. Relief.

8. To substantiate its case, the petitioners examined PW-1 Daya Chand, ALM, HSEB, Bhiwani, PW-2 Smt. Damyanti widow of Hukam Chand, PW-3 Jeet Ram son of Ram Singh, PW-4 Sanjay Kumar son of Chhater Singh and PW-5 Ram Chander son of Mange Ram and closed the evidence of the petitioner. On the other hand, respondents tendered in evidence, photocopy of driving licence Ex. R-1 and closed the evidence.

9. The Tribunal, after appraisal of the evidence and after hearing learned Counsel for the parties, awarded Rs. 2,80,000/- as compensation to the claimants to be shared by them equally along with interest @ 12% per annum from the date of petition till its realization.

10. Learned Tribunal in MACT No. 139 of 1997 titled as Dhanpati Devi and Ors. v. Rajbir Singh and Ors. decided on 24.12.1998. The learned claims Tribunal has held that since the offending truck No. HR-46/1097 was not insured with respondent No. 3 and as such respondent No. 1-Rajbir Singh driver and respondent No. 2 Prem Narain owner are jointly and severally liable to pay the amount of Rs. 2,80,000/- along with interest @ 12% per annum.

11. Dissatisfied with the Award dated 24.12.1998 passed by Motor Accident Claims Tribunal, Bhiwani Prem Narain owner has preferred the appeal No. 600 of 1999 praying that liability be fastened upon Insurance Company.

12. The claimants have preferred cross-objections under Order 21 Rule 22 of the CPC against the said Award for fastening the liability against the Insurance Company. Prayer has also been made in the cross-objections for enhancement of compensation.

13. Dhanpati Devi widow of Bhagwan Dass and others preferred claim petition No. 163 of 2.4.1997, which was decided on 15.2.2001 by Shri M.P.Mehndiratta, learned Motor Accident Claims Tribunal, Jhajjar regarding the same occurrence in respect of death of Bhagwan Dass in a motor vehicular accident. The Tribunal accepted the claim petition and granted an amount of Rs. 3,07,200/-. All the respondents including National Insurance Company were held jointly and severally liable to pay the amount.

14. Feeling dis-satisfied with the said Award dated 15.2.2001 Dhanpati Devi and Ors. have preferred FAO No. 4190 of 2001 for enhancement of compensation.

15. Since Bhagwan Dass and Hukam Chand had died in the same occurrence and as such both these FAOs are being disposed of by the common judgment.

16. In FAO No. 600 of 1999, an application under Order 41 Rule 27 CPC for producing additional evidence has been filed in which it is pleaded that Rajbir Singh driver engaged Shri Devinder Chauhan Advocate of Rohtak to defend his criminal case titled State v. Rajbir Singh. The same Counsel was engaged by Prem Narain owner and the copy of the registration certificate, certified copy of Insurance Cover were handed over to him as the original were lying in the Court. Said Devinder Chauhan, Advocate was approached by Prem Narain appellant but he has not produced those documents. So, prayer has been made for allowing the application for producing any registration certificate and copy of insurance cover.

17. Feeling dis-satisfied with the aforesaid award, appellant has filed the instant appeals as well as cross-objections.

18. I have heard the learned Counsel for the parties and have gone thorough the records of the case.

19. In this case the claimants are seven in number and they have alleged that deceased Bhagwan Dass was a building contractor and his monthly income was Rs. 15,000/-. Claimant has further deposed that all the children are studying in good schools and one of them is college student. She has stated that deceased was paying Rs. 1500/- per month as a rent of the house. The learned trial Court after appraisal of the evidence assessed the income of the deceased as Rs. 4000/- per month. The dependency was taken as Rs. 3200/- per month. The yearly dependency was taken as Rs. 38,400/-. The age of the deceased was 46 years as per post mortem examination and the multiplier of 8 was applied by the Tribunal. All the respondents are held jointly and severally liable to pay the awarded amount.

20. The income of the deceased was taken as Rs. 4000/- in the year 1997, so that income has been correctly assessed and the dependency has been taken as Rs. 3200/- per month. Keeping in view the the fact that there were seven dependents and in authority Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. 2009 (3) R.C.R. 77 , it has been held that in case the dependents are more than six, the dependency shall be taken as 1/5th. The Tribunal has also calculated the dependency after deducting the amount 1/5th amount towards expenses of the deceased. The Tribunal has rightly assessed the amount of the dependency as Rs. 3200/-. Yearly dependency has also been correctly assessed as Rs. 38,400/-. However, in view of authority Smt. Sarla Verma and Ors. (supra) the multiplier applied by the Tribunal in the age group of 46 to 50 should be 13. So, the multiplier applicable in this case should be 13. The amount calculated in this manner comes to Rs. 38400 x 13 = Rs. 4,99,200/-. The claimants are also held entitled to claim Rs. 2000/- in respect of funeral expenses, Rs. 5000/- in respect of consortium, Rs. 2500/- towards loss of

estate. So, the claimants are held entitled to claim Rs. 5,08,700/-. The enhanced amount of Rs. 2,01,500/- shall carry the interest @ 7% per annum from the date of the appeal till realization. Out of this amount Rs. 1,00,000/-shall be paid to the widow and the remaining amount shall be paid to the other appellants in equal shares. In case, any of the claimants, is still minor, amount of his share shall be deposited in his name in fixed deposit in a nationalized bank and shall be payable to him on attaining the age of majority.

21. In MACT case No. 163 of 13.8.1998 the liability to pay the amount is jointly and severally and appeal No. 4190 of 2001 has been filed for enhancement. The liability assessed by the Tribunal is correct.

22. However, in respect of the same accident, claim petition No. 139 of 1997 has been filed titled as Daya Nand and Ors. In the said case, Insurance Company has been absolved from the liability on the ground that the policy has not been placed on the record. The Insurance Company has not preferred any appeal against MACT case No. 163 of 13.8.1998 vide which the Insurance Company has been held liable to pay the amount. In fact, the previous number of vehicle in question was CIW 7176 and the said vehicle was purchased from other State and later on the number attributed to the truck in question was HR-46A-1097. In MACT No. 139, the Insurance company has wrongly been absolved from its liability in respect of the same accident. However, there cannot be two findings in regard to the same incident.

23. In another FAO No. 600 of 1999 cross-objections have been filed for enhancement whereas the owner has filed the appeal that insurance company has been wrongly absolved and an application under Order 41 Rule 27 CPC for producing a copy of the registration certificate and insurance policy has been filed. The same stands admitted.

24. So, in these circumstances, the Insurance Company is held liable to pay the amount along with the owner and driver jointly and severally. So, the appeal preferred by the appellant stands accepted and the liability to pay the amount is held to be that of driver, owner and insurance company.

25. Now reverting into the cross-objections preferred by the claimants.

26. Learned Counsel for the cross-objectors relied upon authority Smt. Sarla Verma and Ors. case (supra) and has submitted that salary of deceased-Daya Nand was Rs. 4204/- per month and deceased Daya Nand was working as Clerk in Haryana State Electricity Board. Age of Daya Nand was thirty nine years and eleven months. His date of birth was 5.2.1957 and he died in the year 1997. The multiplier as per Smt. Sarla Verma and Ors. case (supra) should be 15 whereas the Tribunal has applied the multiplier of 8 only. Rs. 1600/- has been granted as funeral expenses. In this manner Rs. 2,80,000/- has been granted to the claimants. It is further contended that where the deceased had a permanent job and his age is below 40 years, in that case 50% annual salary be added towards future prospectus. So, it is contended that the salary of the deceased Rs. 4299/-

(rounded off Rs. 4300/-) by adding 50% amount, the amount comes to Rs. 6450/-. By taking yearly income as Rs. 77,400/-, 1/3rd amount is deducted for personal expenses. Annual dependency comes to Rs. 51934/-. By applying multiplier of 15, the amount calculated is Rs. 7,79,010/- whereas prayer has been made for grant of compensation as loss of estate Rs. 5000/- loss of consortium Rs. 10,000/- and funeral charges Rs. 2500/- in this manner the amount comes to Rs. 7,96,510/-.

27. The first submission made by the Counsel for the appellant is that 50% amount has to be added in respect of loss of future prospectus in case the age is less than 40 years. In the present case, the age of the deceased was 39 years and eleven months. The object of the Act is to provide just compensation to the family of the deceased. No doubt, in authority Smt. Sarla Verma and Ors. (supra), the Hon''ble Apex Court has held that in case the deceased is a permanent employee in that case 50% amount should be added to the income in respect of the future prospectus. However, the other fact of getting pension by the legal representatives of deceased has not been considered. There may be a promotion post with pensionable and there may be a promotion post without pension. Both cannot be equated together. In the present case it has come on the record that legal representatives of the deceased are getting pension. So, there is income to the family on account of untimely death of deceased. The Hon''ble Apex Court in various authorities have held that pensionary benefits have not been deducted while calculating the compensation but the fact whether the pensionable benefit can be taken into account for making enhancement of compensation? I am of the view that if legal representatives of deceased are getting pensionary benefits, to that extent increase of future prospectus stands neutralized. The income of the deceased was Rs. 4299/- and the trial Court has taken the income of Rs. 4200/-. The deceased might be paying some tax and as per salary,the tax liability is to be deducted from the income for calculating the actual income. So, the Tribunal has rightly taken the income as Rs. 4200/- and the dependency as Rs. 2900/-. The yearly dependency has been taken as Rs. 34,800/-. However, the multiplier applied by the Tribunal is at the age of 40 years is on lower side and according to the Smt. Sarla Verma and Ors. (supra), it should be 15.

28. So, by applying the multiplier of 15, an amount calculated as Rs. 5,22,000/-. The claimants are also entitled for Rs. 5000/- as funeral expenses and in respect of loss of consortium Rs. 2500/- and in respect of loss of estate Rs. 2000/-.

29. In this manner the claimants are held entitled to Rs. 5,31,500/-. The enhanced amount of Rs. 2,51,500/- shall carry the interest @ 7% per annum from the date of the appeal till realization. Rs. 1,00,000/- shall be paid to the widow and the remaining amount shall be paid to the other appellants in equal shares. In case, any of the claimants, is still minor, amount of his share shall be deposited in his name in fixed deposit in a nationalized bank and shall be payable to him on attaining the age of majority.

30. Both the aforesaid appeals and cross-objections stand disposed of with the manner indicated above.

31. A copy of this judgment be sent to the trial Court for strict compliance.

