IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.678 of 1990

DATE OF DECISION: 26.07.2006

SITA RANI AND OTHERS

...APPELLANTS

VERSUS

PARKASH CHAND AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MAHESH GROVER

Present: Mr.Munishwar Puri, Advocate,
for the appellants.

Mr.R.K.Bashamboo, Advocate,
for respondent No.3.

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MAHESH GROVER, J.

The present appeal has been preferred by the claimants against the award of MACT, Ludhiana dated 09.04.1990. The facts of the case are that one Charan Dass Verma died in a road accident which had taken place on 27.12.1987 at 06.30 a.m. The deceased was going in a car bearing No.MAE 670 driven by him on the road along Sirhand Canal. A truck bearing No.HIB 4881 came from the opposite side and hit the car as a result of which Charan Dass Verma lost his life. The appellants were the claimants who brought forward a claim petition against the respondents pleading that the deceased had died due to rash and negligent driving of the truck, in question and that they were entitled to a compensation of Rs.6 lacs. It was stated that Charan Dass Verma was earning Rs.5,000/- per month and was aged about 48 years. The respondents had denied that the accident had taken place with the truck, in question, and contended that in fact the accident taken place with some Jeep. They, therefore, denied their

liability in toto. The Tribunal came to the conclusion that the negligence of the offending truck was not established and held that it could not be established as to whether the death of Charan Dass Verma took place as a result of the accident with the truck. On the issue of quantum of compensation, the Tribunal assessed the dependency at Rs.18,000/- per annum by applying a multiplier of 15 to assess the amount of compensation at Rs.2,70,000/-but went on to deduct 1/5th of this amount on account of uncertainties of future life and held the claimants entitled to Rs.2,16,000/-. The amount was, however, denied to the claimants because of the fact that the truck driver had not been held negligent.

Sh.Munishwar Puri, learned counsel for the appellants contended that the Tribunal has gone wrong in disbelieving the version given by Dharam Pal-DW-2. It was contended that there was no question or suggestion put to the said witness in cross-examination regarding the identity of the truck and whether it was involved in the accident or not. Apart from this, there was no other witness who could controvert the case of the appellants in so far as the manner in which the accident had taken place. Along with the appeal, the appellants filed an application under Order 41 Rule 27 read with Section 151 CPC and has sought to produce the judgment of the Judicial Magistrate Ist Class dated 15.01.1990 in which respondent No.1 was convicted for an offence under Section 279 and 304-A of the IPC for having caused the accident, in question. It was pleaded that unfortunately this judgment could not be produced before the Tribunal and that this would have gone long way to establish the factum of the accident and to establish the negligence of respondent No.1.

After hearing learned counsel for the appellants, I am of the

considered view that the Tribunal had gone wrong in disbelieving the version given by the eye-witness. No evidence to the contrary was led and the judgment of the Judicial Magistrate Ist Class convicting respondent No.1 cannot be overlooked. No doubt the judgment of the criminal court is not a conclusive piece of evidence to be taken into account to establish the negligence of the offending vehicle but it certainly has a persuasive value and in view of this, the fact that the accident stood established with the truck, belying the version of the respondents who have denied the accident in toto. It is, thus, safe to conclude that the accident had actually taken place due to the rash and negligent driving of respondent No.1.

The finding of the Tribunal on this issue is, therefore, set aside.

In so far as amount of compensation is concerned, it was contended by the learned counsel for the appellant that the deceased was earning Rs.5,000/- per month and, therefore, the dependency of Rs.18,000/- per annum which has been assessed by the Tribunal is grossly inadequate. In support of his contention, he has referred to Exhibit PW-3/1 which is a certificate of the Chartered Accountant in which it has been shown that the deceased was earning an income of Rs.50,000/- approximately per annum after allowing the necessary deductions. However, perusal of this certificate shows that not much reliance can be placed in as much no particulars of the income of deceased are given and no income tax returns have been furnished. It has also come in evidence by way of statements of Sita Rani, PW-1 and Dharam Pal, PW-2, who have stated that Charan Dass Verma was a matriculate and had no technical qualification. He was manufacturing cycle parts. Sita Rani has stated that the deceased was contributing Rs.3,000/- per month for household expenses. Since, there is no conclusive

evidence to establish the income of the deceased, therefore, one would have to go on the probabilities. The claimant Sita Rani has deposed that he was getting Rs.3,000/- per month and the Tribunal has discarded this on the ground that it appears to be an exaggeration.

In my opinion, it would be safe to take the income of the deceased as Rs.3,000/- per month and taking the dependency @ Rs.2500/- per month it would work out to Rs.30,000/- per annum. In the facts and circumstances of the case that the deceased was aged 48 years, multiplier of 12 would be suffice. The compensation would, therefore, come to Rs.3,60,000/- The appellants shall be entitled to Rs.10,000/- by way of funeral expenses and Rs.5,000/- for loss of consortium. The total amount of compensation awarded to the appellants is Rs.3,75,000/- which shall be paid to them along with interest @ 9% per annum from the date of application till the date of realization.

Mr.R.K.Bashamboo, learned counsel for respondent No.3 has contended that the liability of the Insurance Company was limited to an amount of Rs.1,50,000/-. The policy on record is Exhibit RA. A perusal of the policy shows that the contention of the learned counsel for the Insurance Company is misplaced. The policy does not reflect as to whether the liability of the Insurance Company is limited to statutory limit or not.

In view of this, the present appeal is allowed.

July 26, 2006 (MAHESH GROVER)
seema JUDGE