IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Cross Objections No. 108.CII of 2013 in/and
F.A.O. No. 3638 of 2011 (O&M)
Date of decision : January 16, 2015

Reliance General Insurance Company Limited

....Appellant

versus

Sukhwinder Kaur and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Rajneesh Malhotra, Advocate, for the appellant

Mr. Pawan Atri, Advocate for
Mr. Ashit Malik, Advocate for respondents nos. 1 to 3/
claimants/cross-objectors

None for respondent no. 4 and 5

Fateh Deep Singh, J. (Oral)

The learned Motor Accident Claims Tribunal, Kurukshetra disposed off three claim petitions through a consolidated award dated 2.2.2011. Out of this award an appeal has been preferred in respect of MACT No. 135 of 2010, titled Smt. Sukhwinder Kaur and others vs Hari Ram and others by the insurer challenging the compensation awarded in respect of deceased Dr. Bawa Singh to the tune of Rs 29,46,240/- and in which cross-objections have been preferred by the claimants seeking enhancement of the same.

Heard Mr. Rajneesh Malhotra, Advocate, for the appellant and Mr. Pawan Atri, Advocate for Mr. Ashit Malik, Advocate for respondents no. 1 to 3/claimants/cross-objectors whereas none has appeared for respondent nos. 4 and 5 and perused the record.

The findings that it was on 1.9.2009 in the area of village Kalyana due to rash and negligent driving of offending car No. HR03F-7080 by its driver Hari Ram which struck against car of the deceased had led to the accident resulting in death of the deceased and which finding by way of issue no. 1 has been laid to rest as it has never been assailed. In the light of the contentions made before this Court, only moot point that has sought to be argued is over the quantum of compensation, the insurer-appellant claims that it was on the higher side whereas the cross-objectors/ claimants seek enhancement of the same terming it to be on the lower side.

The presence of Sukhwinder Kaur widow of the deceased who has testified as PW3 cannot be put to doubt as she has received injuries and in one of the petition claims relief for her injuries in the consolidated award and who have been supported by testimony of eye witness PW5 Amardeep Singh who was going in another vehicle and who has testified that the deceased was travelling in Maruti Car 800 when the accident took place due to fault of Hari Ram and MLRs of Swaran Singh and Sukhwinder Kaur Exs. P2 and and P3 have been brought on the record along with report under section 173 Cr.P.C. Ex. P6 holding that the driver has been challaned for this criminal act.

The deceased as per the claim of the claimants was employed as doctor in Primary Health Centre, Babain getting salary of Rs 60,000/- per month and was aged 51 years at the time of death. The evidence comprises of PW1 Bal Kishan, Clerk who has proved by way of salary certificate Ex. P1, the salary as well as the date of birth of the deceased as 3.4.1957 and has proved salary as Rs 59,945/- per month. The learned Tribunal as has been pointed out has considered this salary to the tune of Rs 46,037/- per month after making necessary deductions and as has been argued by the counsel for the cross-objectors/claimants, the learned Tribunal has considered that the earnings of the deceased would have been upto the age of retirement and thus has considered the loss of 8 years which is contrary to the law. Being professional doctor, it cannot be assumed on its own that his earnings would be put to an end on his retirement and it is normally seen that persons in such a profession have no dearth of re-employment as well as earning on their own by private practice. The Tribunal has wrongly deducted and considered the earnings to be Rs 46,037/- per month when the proven salary is Rs 59,945/- per month. The deceased has left behind

behind 2 sons, one of whom is a minor. The learned Tribunal deducted 1/3rd out of these earnings quite contrary to the law laid down in **New India Assurance Company Limited vs. Gopali and others, 2012 (3) RCR (Civil) 818** and in the totality of the evidence, the earnings of the deceased needs to be taken as Rs 60,000/- (Rs 59,945/- rounded off to Rs 60,000/-) and multiplier of 11 needs to be applied keeping in view the annual dependency after necessary deductions of 1/4th and applying multiplier of 11, the compensation comes to Rs 33 lacs. The family must have spent on the last rites and ceremonies, the wife has lost her husband, children their father a source of love and affection besides loss of consortium and by some guess work, Rs 1,50,000/- needs to be awarded under these conventional heads which the learned Tribunal has lost sight and awarded a mere pittance by way of funeral expenses and therefore, total compensation comes to Rs 34,50,000/- (Rupees Thirty four lacs and fifty thousands only). The learned counsel for the appellant could not convince this Court how the amount so calculated was not just and fair and is commensurate with the earnings of the deceased besides the fact that no amount of compensation can assuage the feelings of wrong done which void cannot be filled up throughout life of the family. Keeping in view the same and that learned Tribunal has split the multiplier certainly is wrong appreciation and needs to be rectified. In the light of aforesaid discussions, the amount awarded needs to be modified thereby allowing cross-objections filed by the claimants and having no merit in the appeal filed by Insurance Company, the same stands dismissed.

The cross-objectors/claimants shall also be entitled to interest @ 7.5 % on the enhanced amount from the date of filing of appeal till realization. Rest of the stipulations laid down by the Tribunal need not be disturbed. Interim compensation paid, if any, shall be adjusted.

(Fateh Deep Singh)
Judge

January 16, 2015
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