IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2710 of 2012 in/and
Cross-objection No.37-CII of 2013
Date of decision: 08.12.2015

Future Generali India Insurance Co. Ltd.

….Appellant

Versus

Smt. Guddi Devi and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Aggarwal, Advocate, for the appellant-Insurance Company.

Mr. Arvind Kumar, Advocate, for respondent Nos.1 to 5-cross objectors.

RITU BAHRI J. (Oral)

Future Genrali India Insurance Company Ltd.-appellant has filed this appeal (FAO No.2710 of 2012) against the award dated 23.03.2012 passed by the Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.18,56,000/- has been awarded in favour of the claimants-respondent Nos. 1 to 5 on account of death of Vikram Singh in a motor vehicular accident which took place on 25.01.2011. Respondent No. 1 is widow, respondent No.2 is mother, respondent Nos.3 & 4 are children and respondent No.5 is father of deceased Vikram Singh.

On the other hand, cross objectors-respondent Nos.1 to 5 (claimants) have filed Cross Objection No.37-CII of 2013 seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 23.03.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 24.01.2011, deceased-Vikram Singh was going to Bhiwadi from his house on the motorcycle. When he reached in the revenue estate of village Devlawas near Harbal Park, a maruti car bearing registration No.HR-26-T-7095, being driven by Anil Kumar-respondent No.6 (respondent No.1 in claim petition) in a rash and negligent manner, came at a very high speed and struck against the motorcycle of Vikram Singh, as a result of which he received fatal injuries and died at the spot. With regard to the accident, FIR No.20 dated 25.01.2011, under Sections 279/304-A IPC was registered against driver-respondent No.6. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident had been caused on account of rash and negligent driving of offending vehicle by Anil Kumar and thus, returned the finding on Issue No.1 in favour of the claimants. On the basis of copies of RCs of vehicles, Ex.PW1/1, Ex.PW1/2 and Ex.PW1/3, which were in the name of deceased-Vikram Singh and driving licence, Ex.PW1/4, it has been observed by the Tribunal that the deceased was having three vehicles. Wife of deceased namely Guddi Devi (PW-2) deposed that the deceased was earning Rs.25,000/- per month from the work of loading at Bhiwadi and Dharuhera having three tempo in his name along with one tractor. He was also driver by profession and PACL agent. In the absence of any direct evidence, income of the deceased was assessed at Rs.12,000/- per month. Out of this, 1/4th amount was deducted towards personal expenses of deceased. The dependency of claimants, thus, came to Rs.9000/- per annum i.e. Rs.1,08,000/- per annum. As per postmortem report (Ex.PW5/A), the deceased was 27 years of age at the time of accident/death and the multiplier of 17 was applied. Thus, the claimants were found entitled to compensation of Rs.18,36,000/-. In addition to it, Rs.20,000/- were awarded towards loss of consortium and funeral expenses etc. Hence, the claimants were found entitled to a total compensation of Rs.18,56,000/- along with interest @ 6% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 to 5 have filed Cross Objection No.No.37-CII of 2013 seeking enhancement of compensation awarded by the Tribunal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding of Tribunal on issue No.1 that the accident had been caused on account of rash and negligent driving of offending vehicle by Anil Kumar-driver, which has resulted into the death of Vikram Singh. The impugned Award has been challenged on the ground of assessment of compensation. Learned counsel for the Insurance Company-appellant has referred to the judgment passed by the Hon'ble Supreme Court in ***New India Assurance Company Limited Vs.***

Yogesh Devi and others, 2012 (3) Supreme Court Cases 613. In this case, the Hon'ble Supreme Court had modified the compensation, where the deceased was owner of three mini buses and had died in the road accident. The compensation had been assessed taking his income as driver and agriculturist. It was alleged that he was earning Rs.35,000/- per month being agriculturist and owner of three mini buses. The High Court had taken notional income of deceased as Rs.24,000/- per month. The Hon'ble Supreme Court had taken the income of deceased as Rs.10,000/- being a Manager of three mini buses and Rs.3900/- as salary of driver of said buses. Thus, the total income of deceased was taken as Rs.13,900/- per month and after imposing the necessary cut, the compensation was assessed.

In the facts of the present case, ownership of three tempos is not disputed by the Insurance Company-appellant, which is duly proved by the documents, Ex.PW1/1, Ex.PW1/2 and Ex.PW1/3. After the death of Vikram Singh, the aforesaid three vehicles were retained by the family members and could be used again for earning purposes. However, the deceased was managing these vehicles and in view of the aforesaid judgment of Hon'ble Supreme Court, this Court is of the view that income of the deceased has been rightly taken by the Tribunal as Rs.12,000/- per month. Therefore, the appeal filed by the Insurance Company-appellant has no merits

Resultantly, present appeal (FAO No.2710 of 2012) filed by the Insurance Company-appellant is **dismissed** and Cross Objection No.No.37-CII of 2013 filed by the claimants-respondent Nos. 1 to 5 is **allowed**.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby reassessed in view of the judgments of ***Asha Verman and others vs. Maharaj Singh and others***, **2015(2) RCR (Civil) 520**, ***New India Assurance Company Limited vs Gopali and others,*** **2012 (12) SCC 198**, ***Sarla Verma and others vs. Delhi Transport Corporation and another***, **2009 (3) RCR (Civil) Page 77**, ***Rajesh and others vs. Rajbir Singh and others***, **2013 (9) SCC 54** and ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others***, **2015 (3) Recent Apex Judgments 459,** as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.12,000/- per month
(ii)	50% of (i) above to be added as future prospects	12,000 + 6000 = Rs.18,000/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	18,000 – 4500 = Rs.13,500/-
(iv)	Compensation after multiplier of 17 is applied	Rs.13,500/- x 12 x 17 = Rs.27,54,000/-
(v)	Loss of consortium for the widow	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for the children	Rs.2,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection for the parents	Rs.1,00,000/- (Rs.50,000/- each)
(ix)	Funeral expenses	Rs.25,000/-
(x)	**TOTAL COMPENSATION AWARDED**	**Rs.32,79,000/-**
(xi)	**Enhanced amount of compensation**	**Rs.32,79,000 – 18,56,000 = Rs.14,23,000/-**

The enhanced amount of compensation of **Rs.14,23,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent.

(RITU BAHRI)
JUDGE

08.12.2015
ajp