IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross-objection-105-CII-2014 in/and
FAO No.1237 of 2014

Date of Decision: 01.12.2015

Reliance General Insurance Company Ltd.

.......Appellant

Versus

Devinder Kumar and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Suman Jain, Advocate for the appellant.

Mr. Sunil K. Rana, Advocate for respondents No. 1 to 4/cross-objectors.

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RITU BAHRI, J. (ORAL)

Main Case:-

The present appeal has been filed by the appellant-Insurance Company against the award dated 05.10.2013, passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as "the Tribunal"), whereby the claimants have been awarded a compensation to the tune of Rs.13,13,000/-, on account of the death of Deepak in a motor vehicular accident, which took place on 03.07.2010.

Facts not in dispute:-

The facts of the case, as given in the claim petition, are that on 03.07.2010, Deepak went to Palwal to attend a marriage at Banquet Hall near Radha Krishna Dhaba on the National Highway No.2, Since there was a marriage in the Banquet Hall, there was a rush of vehicles as also the persons who had come to attend the marriage. In the meantime, a tanker bearing No. HR-66-0242**(hereinafter referred to as the offending vehicle)** driven by respondent No.1 came from the side of Hodel. Since the person who had came to attend the marriage were there on the road, the driver of the offending vehicle was signalled to drive his tanker towards the left side of the road. However, without caring of the signal, he while driving the tanker rashly and negligently came towards the right side of he road and crushed the *baraties* with his tanker. Deepak and one other barati died at the spot and others were grievously injured. It has been averred that the accident took place on account of the sole rash and negligent driving of the offending vehicle by respondent No.1. It has further been averred that Deepak was hale and hearty and was 21 years old. His father is handicapped. The parents and sister of the deceased-Deepak had no source of income and they were maintained by him. He was running his own *kiryana* and *general store* and was earning Rs.12,000/- per month. It has also been averred that his wife, namely, Chanchal had remarried and she had left her matrimonial home on the rasam pagri itself.

In this appeal, respondents No. 1 to 3 are the parents and sister of the deceased-Deepak as well as respondent No.4 is his wife, namely Chandhal alias Sapna. She was earlier impleaded as respondent No.4. A sum of Rs.20 lacs has been claimed as compensation.

Resultantly, the claimants-respondents filed a claim petition before the Tribunal.

<u>Compensation Assessed by the MACT, Gurgaon:-</u>

Before the tribunal, the claim petition has been opposed by respondent No.3-Insurance Company(present appellant) only. Respondents No.

1 and 2 did not appear and were proceeded against *exparte.* In the written statement filed by respondent No.3-Insurance Company(present appellant), certain preliminary objections have been raised. It has been averred therein that Mahesh Kumar(driver of the offending vehicle) was not having a valid and effective driving licence to drive a transport vehicle carrying goods of dangerous and hazardous nature therefore, the claim petition is misconceived and is not maintainable. It has also been averred that under these circumstances, the Insurance company(present appellant) would not be liable to pay any compensation.

On the other hand, counsel for the claimants has contended that Mahesh Kumar(driver of the offending vehicle) was duly licensed to drive a heavy vehicle and, therefore, the Insurance Company would be liable to pay the compensation. The driving licence of Mahesh Kumar(driver of the offending vehicle) is on record as ExP-2. The same is valid till 30.09.2011 and Mahesh Kumar(driver of the offending vehicle) is authorized to drive a heavy goods vehicle also.

Before the Tribunal, both the parties were called upon to adduce evidence in support of their respective claims. In order to prove their claim, Devinder Kumar (one of the claimants) appeared as PW-3 and examined Rishi Pal Addl. Ahlmad in the Court of Shri Devinder Singh, learned ACJM, Palwal, as PW-1 and Mahender Kumar as PW-2. The claimants have also tendered into evidence documents; certified copy of final report filed under Section 173 Cr.P.C. Ex. P1, driving licence of Mahesh Kumar Ex.P2, certificate of registration Ex.P3, certified copy of FIR.P-4, certified copy of PMR Ex.P-5, Insurance Policy Ex. P6, medical certificate mark P-5, photocopy of the disability certificate of Devinder Singh mark P-6, photocopy of photograph of

Mani Ram, mark P-7 and death certificate of Mani Ram, mark P-8.

On the other hand, before the Tribunal, respondent No.3-Insurance Company(present appellant) chosen not to lead any evidence.

Ultimately, the Tribunal has came to the conclusion that the accident in question was occurred due to rash and negligent driving by respondent No.1 and the Tribunal has returned the findings on Issue No.1 in favour of the claimants.

The claim petition was partly allowed with costs by the Tribunal and a sum of Rs.13,13,000/-(Rupees thirteen lacs thirteen thousand only) was awarded on account of death of Deepak along with future interest @ 7% per annum from the date of filing of the petition till its realization.

The age of the deceased has been mentioned in the claim petition as 21 years. His age in the post mortem report which is on record as Ex.P5 is mentioned as 23 years. There is no other evidence by either side on the age of the deceased. The age of the deceased is, therefore, assessed as 23 years. There is no proof of the deceased for running a Kiryana shop at the time of his death. There is absolutely no documentary evidence or even oral evidence to this effect. Except for the self serving statement of PW3 Devinder, there is no other evidence on record. Under the circumstances, it can not be said that the deceased Deepak was running a Kirayana shop. Being an able bodied person he can at best be presumed as a labourer. The monthly income of the deceased Deepak is, therefore, held to be Rs.5500/- per month.

In view of the ration laid down in the case of ***Sarla Verma and others Vs. Delhi Transport Corporation & another, 2009(3) RCR(Civil) 77 (S.C.),*** where the number of the dependents is from 2 to 3, a deduction of $1/3^{rd}$ would be required to be made for the personal expenses of the deceased. The monthly dependency of the family, therefore, comes to Rs.5500/-(8250-2750). The annual dependency would, therefore, comes to Rs.66,000/-(Rs.5500 x12). As per the ratio laid down in ***<u>Sarla Verma's case (supra)</u>***, a multiplier of 18 would apply since the deceased was 23 years old. The compensation payable, therefore, comes to Rs.11,88,000/- (Rs.66,000 x 12). It was held by the Hon'ble Supreme Court of India that the amount to be awarded towards funeral expenses should be Rs.25,000/- and towards loss of consortium should be Rs.1 lac. Therefore, in total, the claimants are entitled to Rs.13,13,000/- (Rupees thirteen lacs thirteen thousand only) as compensation on account of death of the deceased.

Feeling dissatisfied with the impugned award of the MACT, Gurgaon the appellant-Insurance Company has preferred the present appeal.

Learned counsel for the appellant-Insurance Company has argued that the Tribunal has erred in taking the income at Rs.5500/-per month. The said income is taken on higher side. As per him the Tribunal has considered the deceased to be a labourer and at the relevant time the minimum wages for a labourer were Rs. 4348/-p.m. He has also argued that the respondent No.4, widow had remarried immediately and had in fact, not even filed the claim petition which was filed only by the parents and the sister of the deceased and she was impleaded only on the direction of the Tribunal. In the circumstances no amount should have been granted to her for consortium.

I have heard learned the contention raised by learned counsel for the appellant-Insurance Company, but the same is liable to be rejected, as the Tribunal has recorded the finding in view of the case of **<u>Sunita Vs. Ram Kumar</u>** passed in FAO No.6630 of 2010 decided by this Court on 05.10.2012, wherein it was held that the widow who has been left behind the husband is entitled to full compensation even after her re-marriage. However, in the Case of ***Oriental Insurance Company Ltd. and others Vs. Smt. Santosh and others*** *2010 (4) PLR 802*, it was held that when a widow got remarried, it would be relevant for scaling down the extent of dependency.

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

Moreover, learned counsel for the appellant-Insurance Company has argued that the monthly income of the deceased taken as Rs.5500/- per month, which is taken on higher side the said contention is not accepted because it is not disputed that the deceased was running a *Kiryana Shop* and the accident took place on 03.07.2010, so the income of the deceased has rightly been taken. The appeal filed in the year 2010 and the minimum wages for a labourer were Rs.4300/-per month in the year 2008.

Consequently, this Court finds that the income of the deceased i.e. Rs.5500/- per month as well as amount awarded towards funeral expenses i.e. Rs.25,000/- and towards loss of consortium i.e. Rs.1 lac. have rightly been assessed by the Tribunal and the same do not call for interference.

Therefor, appeal filed by the Insurance company stands dismissed.

Cross-objection-105-CII-2014

Present cross-objection has been filed on behalf of respondent No.1 to 4/cross-objectors under order 41 Rule 22 of CPC read with Section 151 CPC seeking modification in the impugned award dated 05.10.2013 passed by Ld. MACT, Gurgaon, by enhancing the amount of compensation.

Feeling dissatisfied with the impugned award 05.10.2013 passed by Ld. MACT, Gurgaon, the respondents No. 1 to 4/claimants have preferred the present cross-objection.

I have heard the counsel for the parties and perused the records of the case. The fact of accident is admitted and proved. The deceased died as a result of the accident.

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 '***<u>Asha Verman and others vs. Maharaj Singh and others, 2015(2) RCR (Civil) 520, Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77', 'Rajesh and others vs. Rajbir Singh and FAO No. 9867 of 2014 :4: others, 2013 (9) SCC 54' and 'Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015(3) Recent Apex Judgments 459</u>***'. Accordingly, the compensation is re-assessed as under:-

Sr.No.	***Heads***	***Calculation***
(i)	Income	Rs.5500/- per month
(ii)	50% of (i) above to be added as future prospects	{Rs.5500+Rs.2750/-} Rs.8250/- per month
(iii)	1/3rd of (ii) deducted personal expenses of the deceased	{Rs.8250/-}-{Rs.2750} Rs.5500/- per month
(iv)	Compensation after multiplier of 18 was applied.	{Rs.5500/-x12x18) {Rs.11,88,000/-)
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of love and affection to the parents (Rs.50,000/- each)	Rs.1,00,000/-
(vii)	Loss of estate	Rs.1,00,000/-
(viii)	Funeral expenses	Rs.25,000/-
	TOTAL COMPENSATION AWARDED	(Rs.15,13,000/-)
	Enhanced amount of compensation	(Rs.15,13,000/-)-Rs.13,13,000/-) = Rs.2,00,000/-

The enhanced amount of compensation of Rs.2,00,000/-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 and the present cross-objection is partly allowed.

(RITU BAHRI)
JUDGE

December 01, 2015
Anjal