IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 1793 OF 2014 (O&M)
DECIDED ON : 07.08.2015

Reliance General Insurance Company Limited

...Appellant

versus

Premi Devi @ Premi Devi and others

...Respondents

and

FAO NO. 2069 OF 2014 (O&M)

Premi Devi @ Premi Devi and others

...Appellants

versus

Churia Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI.

Present : Mr. Dinesh Kumar, Advocate for
Mr. R. S. Madan, Advocate,
for the appellant in FAO No. 1793 of 2014.

Mr. Sandeep Goyal, Advocate,
for the appellants in FAO No. 2609 of 2014.

Ms. Kshitija Mittal, Advocate,
for respondents No. 5 and 6.

K. C. PURI, J. (ORAL)

Vide this common judgment, I intend to dispose of two appeals bearing ***FOA No.1793 of 2014*** titled as, ***"Reliance General Insurance Company Limited vs Premi Devi @ Premi Devi and others"*** directed by the Insurance Company and ***FAO No.2069 of 2014*** titled as, ***"Premi Devi @ Premi Devi and others vs Churia Ram and others"*** directed by the claimants for enhancement of compensation, against the Award dated 28.11.2013 passed by Shri Rajan Walia, Motor Accident Claims Tribunal, Kaithal, vide which the claim petition preferred by the claimants in respect of death of deceased Ramphal in a motor vehicular accident which took place on 13.05.2012, was partly accepted.

The learned Tribunal, after adjudication, partly accepted the claim petition and allowed a sum of ₹21,87,720/- as compensation to the claimants. The deceased was working as Constable in Haryana police and his salary has been taken as ₹18,993/- as per salary slip. The deceased was 47 years old at the time of his death. 30% amount was added by the Tribunal, in respect of future prospects and as such, the income of deceased was taken as ₹24,691/- per month. 1/3rd amount was deducted in respect of personal expenses and the monthly dependency was calculated as ₹16,460/-. The yearly dependency was taken as ₹1,97,520/-. The multiplier of 11 was applied by the Tribunal and in this manner, the amount of compensation was calculated as ₹21,72,720/-. Another sum of ₹5000/- was allowed in respect of consortium. A sum of ₹10,000/- was account in respect of last rites. In this manner, a total sum of ₹21,87,720/- was allowed.

The insurance company has directed FAO No. 1793 of 2014 whereas the claimants have preferred FAO No. 2069 of 2014. Since both these appeals have arisen out of the same Award and as such, they are being disposed of vide common judgment.

Learned counsel for the appellant-Insurance Company has submitted that both the material witnesses PW-2 Rajbir and PW-3 Daya Nand have stated that it was a case of head on collusion between the tractor-trolley and the car and as such, it is a case of contributory negligence. To support this contention, learned counsel has relied upon authority ***"PramodKumar Rasikbhai Jhaveri vs Karmasey Kunvargi Tak and others" 2002 (6) SCC 455***.

Learned counsel for the appellants-claimants has supported the findings given by the Tribunal regarding negligence.

I have considered the submissions made by both the sides and have gone through the statements of Pws Rajbir and Daya Nand placed on file.

Both the witnesses i.e PW2 Rajbir and PW-3 Daya Nand, have stated that the accident had taken place due to rash and negligent driving of the tractor-trolley. They have further stated that the trolley was over loaded. No doubt in the cross-examination they have stated that the accident had taken place in the middle of the road, but the other attending circumstances are also to be seen. PW-2 Rajbir and PW-3 Daya Nand have deposed about the manner of accident and have deposed that the accident had taken place due to rash and negligent driving of the tractor-trolley. The driver of tractor-trolley has not come into the witness box to depose about the manner of accident. So, adverse inference has to be drawn against him. Mere fact that the accident had taken place in the middle of the road, does not reach to the presumption that it is a case of contributory negligence. So far as authority ***Pramodkumar Rasikbhai Jhaveri's case (supra)*** is concerned, the same is against the appellant as in that case Award was passed by the Tribunal on the assumption that since the accident took place in the middle of the road, contributory negligence to the extent of 30% is of the driver of the car whereas the offending truck was held negligent to the extent of 70%. It was held in that case that the offending truck came in the centre of the road from the opposite side at excessive speed resulting in collision with the car. However, the Hon'ble Apex Court after considering all the circumstances, held that mere fact that the accident had taken place in the middle of the road is not a ground to assume that it is a case of contributory negligence and whole of the amount was allowed and the findings regarding contributory negligence were set-aside. The facts of present case are almost same. So, the contention raised by learned counsel for the appellant-Insurance Company that it is a case of contributory negligence cannot be accepted and as such, the same stands declined and the findings returned by the Tribunal in this regard stands affirmed.

The next question raised by learned counsel for the appellant-Insurance Company is regarding quantum of compensation.

Learned counsel for the appellant-Insurance Company has submitted that 10% amount has not been deducted in respect of the income tax. However, he has not challenged the factum of income and adding of 30% in respect of future prospects. However, learned counsel for the appellants-claimants has prayed for enhancement of compensation on the ground that admitted age of deceased was 47 years and in view of authority ***"Sarla Verma and others vs. Delhi Transport Corporation and another" 2009(3) RCR (Civil) 77***, the multiplier applicable at the age of 47 is 13 but the Tribunal has wrongly applied the multiplier of 11. It is further submitted that the amount in respect of consortium, last rites is also on lower side in view of authority ***"Rajesh and others vs. Rajbir Singh and others" 2012 (2) Apex Court Judgments 245 (SC)***. He has further submitted that no amount in respect of loss of love and affection has been allowed. So prayer has been made for enhancement of compensation.

I have given my thoughtful consideration to the rival submissions made by both the sides.

The admitted income of deceased was ₹18,993/-. 30% amount was added in respect of future prospects as the deceased was 47 years old at the time of accident and he was a government employee. So, the monthly income of deceased was taken as ₹24,691/-.

Now the contention raised by learned counsel for Insurance company is that 10% amount should be deducted in respect of income tax.

The said contention carries weight and has to be accepted.

So, the income of deceased is taken as ₹22,221.81 after deducting 10% in respect of income tax. The learned Tribunal has deducted 1/3rd in respect of personal expenses. Although, learned counsel for the claimants has submitted that 1/4th should be deducted but the said argument cannot be accepted as one of the son is stated to be major and only three persons are dependents. So, by deducting 1/3rd in respect of personal expenses, the dependency comes to ₹14,814.54 per month. The yearly dependency comes to ₹1,77,774.48.

The next contention raised by learned counsel for the claimants is regarding multiplier. The Tribunal has applied the multiplier of 11 deviating from ***Sarla Verma and others' case (supra)*** on the ground that upto the age of 58, the deceased would have been drawing fully amount of salary and thereafter he would be drawing 50% in respect of his pension. However, the principle of split multiplier has been disapproved by the Hon'ble Apex Court in authority ***"Puttamma and others vs. K. L. Narayana Reddy and another" 2014 (1) RCR (Civil) 443***. So according to ***Sarla Verma and others' case (supra)***, the multiplier applicable at the age of 47 is 13. By applying the multiplier of 13, the amount of compensation comes to ₹23,11,068/-. Another sum of ₹25,000/- stands allowed in respect of last rites, transportation of dead body. ₹1,00,000/- stands allowed in respect of consortium to the widow. The other claimants are further held entitle to claim ₹1,00,000/- in respect of loss of love and affection. In this manner, the claimants are held entitle to claim ₹25,36,068.24 say ₹25,36,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till its realisation. The liability to pay the amount shall remain the same as ordered by the Tribunal. Whole of the enhanced amount shall be paid to the widow as she has to spent her whole life on the income of deceased.

Both the appeals stand disposed of in the manner discussed above.

AUGUST 07, 2015 **(K. C. PURI)**
shalini **JUDGE**