In the High Court of Punjab and Haryana at Chandigarh

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F.A.O. No.794 of 2013 (O&M)

.....

Date of decision:6.4.2015

Oriental Insurance Company Ltd.

.....Appellant

v.

Kashmir Kaur alias Jasbir Kaur and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vinod Chaudhri, Advocate for the appellant.

Mr. Ashok Bector, Advocate for respondents No.1 to 3.

Mr. Shiv Kumar, Advocate for respondents No.4 and 5.

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Inderjit Singh, J.

This appeal has been filed by Oriental Insurance Company Ltd. (hereinafter referred to as `the appellant') against Kashmir Kaur alias Jasbir Kaur, Sandeep Kaur, Himmanpreet Singh, Karamjit Singh and Satpal Gupta-respondents challenging the impugned award dated 12.12.2012 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as `the Tribunal'), vide which the claim petition filed by Kashmir Kaur alias Jasbir Kaur, Sandeep Kaur and Himmanpreet Singh-claimants against Karamjit Singh-Driver, Satpal Gupta-Owner of the truck and Insurance Company under Section 166 of the Motor Vehicles Act (hereinafter referred to as `the Act') has been accepted and an award of ₹13,20,000/- has been passed in favour of the claimants along with interest @6% per annum over the same from the date of institution of the claim petition filed on

19.12.2011 till realization of the amount.

Notice of motion was issued in this case.

Mr. Ashok Bector, learned Advocate has appeared on behalf of claimants-respondents No.1 to 3 and Mr. Shiv Kumar, learned Advocate has put in appearance on behalf of driver and owner-respondents No.4 and 5 and contested this appeal. Record of the Tribunal has also been received.

I have heard learned counsel for the parties and have gone through the record.

At the time of arguments, learned counsel for the appellant argued that there are three claimants only in this case, but the Tribunal has made the deductions to the extent of 1/4th instead of 1/3rd as held in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77. He further argued that the deceased Balvir Singh was not the truck driver. Rather, he was the cleaner and his income has been assessed as ₹6,000/- per month by the Tribunal which is excessive.

On the other hand, learned counsel for the respondents-claimants argued that the income has been assessed correctly by the Tribunal. The deceased was a driver by profession and, in no way, his salary can be held as excessive. He argued that even a labourer earns more than ₹200/- per day by doing manual labour whereas the deceased was a skilled driver. He further argued that as the deceased left a young widow and two minor children, therefore, deductions has been correctly made by the Tribunal.

From the record, I find that the deceased was a young man of

33-34 years and there is no dispute regarding the multiplier applied by the Tribunal in this case and it has been applied as per Sarla Verma's case (supra).

As regards the deductions, as there are only three claimants, therefore, the Tribunal has wrongly made the deduction at 1/4th, but as per the above stated settled law where the dependents are only two or three, then the deduction should be 1/3rd. To this extent, I find merit in the contention of the learned counsel for the appellant.

As regards the income of the deceased assessed by the Tribunal, I find that, in no way, it can be held as excessive. The deceased was having a driving licence, which means he was the driver. Even if it is taken that he was not authorized to drive heavy vehicle, even then in the facts and circumstances of the present case and in view of the evidence led before the Tribunal, it is established that he was a competent driver having the driving licence, therefore, in no way, the amount of ₹6,000/- per month as salary can be taken as excessive.

Therefore, from the above discussion, this appeal is partly allowed. The impugned award passed by the Tribunal is modified to the extent that the deduction should be taken as 1/3rd instead of 1/4th from the income of the deceased and the amount be calculated and paid accordingly.

April 6, 2015. **(Inderjit Singh)**
Judge

hsp