IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.709 of 2014 (O&M)
Date of Decision: 01.10.2015.

National Insurance Co. Ltd., Ludhiana ....Appellant.

VERSUS

Sita Rani and others ....Respondents.

***

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. S.S. Sidhu, Advocate for the appellant.

Respondents No.1 to 4 exparte vide order dated 20.11.2014.

Service of notice to respondents No.5, 6 and 6-A was dispensed with vide order dated 20.11.2014.

***

SNEH PRASHAR, J.

This appeal was filed by the appellant-Insurance Company assailing the award dated 01.11.2013 passed by Motor Accident Claims Tribunal, Kapurthala (for short, "the tribunal") in MACT petition No.38 of 07.06.2011 titled "Sita Rani and others vs. Vijay Kumar and others" awarding compensation to the tune of Rs.4,12,000/- to respondents No.1 to 4-claimants on account of death of Manjit Singh and fastening liability of payment of the award amount on the appellant-insurer and respondents No.5, 6 and 6-A (driver and owner) of the Truck/Trala No.HR-58B-0997 (hereinafter referred to as "the offending vehicle") within two and half months from the date of award, failing which to pay the same alongwith interest at the rate of 9% per annum from the date of claim petition till realization.

The submissions made by Mr. S.S. Sidhu, learned counsel representing the appellant have been considered.

The contention of learned counsel for the appellant-insurance company is that in the written statement, filed in the claim petition before the tribunal, the appellant had raised specific objections (i) that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident; (ii) that the vehicle was being plied without route permit and fitness certificate and in violation of the insurance policy; (iii) that the accident took place due to contributory negligence of the deceased; and (iv) that the claim petition being bad for nonjoinder of necessary party as owner of motorcycle No.PB-54B-0780 was not impleaded as party to the claim petition. On the objections, the tribunal framed issues no.2 and 4 to 6, the onus of which was placed on the insurance company, but ultimately the said issues were decided against it.

Learned counsel further argued that to prove the occupation and income of the deceased the onus was on the claimants. They could produce no substantive evidence to prove that the deceased was a trained mason. The testimony of AW1 Baldev Singh does not inspire confidence because no document was produced to support his version and the learned tribunal has wrongly assessed the income of the deceased as Rs.7500/-. In the absence of any proof the income of the deceased should have been taken as per Minimum Wages Act which at that time was Rs.3692/- per month.

Learned counsel also contended that in this case only the mother of the deceased could claim compensation being class I legal heir and for admitting other claimants as dependents, the tribunal relied on the documents which were not proved on file.

The argument of learned counsel for the appellant may appear to be attractive but has no force. The only issue raised by the appellant-insurance company is that the income of the deceased assessed by the tribunal was on the higher side. The findings of learned tribunal in Para No.22 of the award were as under:-

> *"So far as the alleged income of the deceased is concerned, no documentary evidence has come on record. So keeping in view his age at the time of his death and plea of the claimants that he was a skilled mason, his income for assessing compensation in this case is held to be Rs.7500/- p.m. Since, he was a Bechelor, so he might have been spending half of the amount out of the total earning for his own maintenance. So, total dependency of the present claimants upon him comes upto the extent of Rs.3750 x 12 = Rs.45,000/- P.A."*

Baldev Singh-father (claimant No.2) is 65 years old person and, therefore, it was rightly held by learned tribunal that the deceased was the only earning member of the family who was financially supporting/

maintaining all the other family members.

At the time of issuing notice of motion to the respondents on 03.02.2014 following were the observations of this Court:-

> *"I find that even if this be so yet neither has the Tribunal awarded any amount for future prospects and even on the conventional heads the compensation granted is highly inadequate. Further I find that multiplier has been used on the basis of age of the mother which is inadequate. For the purpose of multiplier the age of both the deceased and the claimant are relevant as held by this Court in the United India Insurance Company Limited v Raj Rani 1998 (1) ACJ 175.*
>
> *Notice of motion for 05.08.2014.*

In the above premises, the monthly income of the deceased for the purpose of assessing compensation was rightly taken as Rs.7500/-.

Accordingly, the argument of learned counsel for the appellant-insurance company that the income of the deceased was assessed on the higher side deserves to be rejected outrightly.

The deceased was 33 years old and was a bachelor. As relied upon in ***Reshma Kumari vs. Madan Mohan, (2013) 4 S.C.C. 65*** learned tribunal rightly deducted 50% of the income towards personal living expenses of the deceased and fixed the dependency of the claimants as Rs.3750/- per month or Rs.45,000/- per annum. The onus to prove issues no.2 and 4 to 6 framed by the tribunal on the preliminary obejctions of the appellant, that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident; that the vehicle was being plied without route permit and fitness certificate and in violation of the insurance policy; that the accident took place due to contributory negligence of the deceased; and that the claim petition being bad for nonjoinder of necessary party as owner of motorcycle No.PB-54B-0780 was not impleaded as party to the claim petition; was squarely on the appellant-insurance company. No substantive evidence was led by the appellant to discharge the onus and hence the issues were rightly resolved against it.

Thus, finding no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

01.10.2015.
jitender