IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO. 8611 OF 2014 (O&M)
DECIDED ON : 31.07.2015

The New India Assurance Company Limited
...Appellant

versus

Bhuvnesh Nandni and others
...Respondents

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

Present : Mr. Rajneesh Malhotra, Advocate,
for the appellant.

Mr. Ashwani Arora, Advocate,
for respondents No.1 to 3.

K. C. PURI, J. (ORAL)

This is an appeal directed by the Insurance Company against the Award dated 18.07.2014 passed by Shri Amit Kumar Sharma, Motor Accident Claims Tribunal, Panchkula, vide which the claim petition preferred by the claimants was partly accepted and a sum of ₹11,73,792/- was allowed as compensation.

The claim petition was preferred by the widow and and minor children of deceased Ajay Kumar seeking compensation on account of death of Ajay Kumar in a motor vehicular accident. Now the challenge in instant appeal by the Insurance Company is regarding quantum of compensation and negligence only.

Learned Tribunal has taken the income of deceased as ₹6250/- per month as minimum wages. The age of deceased was 42 years. 30% was added in respect of future prospects. 1/4th amount was deducted in respect of personal expenses. The monthly dependency was calculated as ₹6094/-. The yearly dependency was calculated as ₹73,128/-. The multiplier of 14 was applied. A sum of ₹10,23,792/- was allowed as compensation. A sum of ₹1,00,000/- was allowed in respect of loss of consortium. Another sum of ₹25,000/- was allowed as funeral expenses and ₹25,000/- in respect of loss of love and affection and future guidance. In this manner, a total sum of ₹11,73,792/- was allowed as compensation to the claimants.

Learned counsel for the appellant has submitted that the deceased was a pillion rider and the accident has taken place due to rash and negligent driving of scooter by Rinku. It is further submitted that negligence of the driver of the offending vehicle has not been proved.

I have considered the said submissions but do not find any force in the same.

The driver of the offending vehicle has not stepped into the witness box for narrating the manner of accident, whereas the claimants have produced the evidence regarding negligence of respondent No.4. It is a civil case and it has to be decided on preponderance of evidence and the same tilts in favour of the claimants. More so, when neither the driver has come into the witness box nor the Insurance company has proved any other evidence to rebut the evidence produced by the claimants. The evidence of claimants regarding negligence goes unrebutted and as such, the above said contention is merit less.

The next contention raised by learned counsel for the appellant is regarding quantum of compensation. It is submitted that the matter regarding future prospects is pending before the larger Bench of Hon'ble Apex Court and that amount should not have been granted by the Tribunal. He has further contended that the deduction of 1/4th has been wrongly made whereas it should have been 1/3rd in view of authority ***"Sarla Verma and others vs. Delhi Transport Corporation and anr." 2009 (3) RCR (Civil) 77.***

Learned counsel for the claimants has submitted that future prospects have to be considered as there is no stay by the Hon'ble Apex Court. However, he is fair enough to concede that the deduction should be 1/3rd in respect of personal expenses but has further submitted that the amount granted in respect of loss of love and affection as ₹25,000/- is on lower side.

I have considered the submissions made by both the sides and have gone through the records of the case.

So far as the argument advanced by learned counsel for the appellant that future prospects should not have been taken into consideration is concerned, the same is devoid of any merit. The three Judges Bench of Hon'ble Apex Court in authority

"Munna Lal Jain and another vs Vipan Kumar Sharma and others" passed in ***Civil Appeal No. 4497 of 2015 decided on 15.05.2015,*** has approved the criteria laid down in authority ***"Rajesh and others v. Rajbir Singh and others" 2012 (2) Apex Court Judgments 245 (SC).*** In ***Rajesh and others' case (supra)*** it has been held that future prospects has to be given to the extent of 30% where the deceased is in the age group of 40-50 years. The income of deceased has been taken as ₹6250/- per month. No challenge has been made by any of the party to that aspect. So, the income of deceased is taken as ₹6250/- per month. 30% has been rightly added in respect of future prospects by the Tribunal. The Tribunal has rightly taken the income of deceased as ₹8125/- per month. However, the dependency has to be calculated by deducting 1/3rd in respect of personal expenses in view of authority ***Sarla Verma and others' case (supra).*** So, after deducting 1/3rd, the monthly dependency comes to ₹5416.6. The yearly dependency comes to ₹65,004/- say ₹65,000/-. The Tribunal has rightly applied the multiplier of 14 in view of authority ***Sarla Verma and others's case (supra).*** So by applying the multiplier of 14, the amount of compensation comes to ₹9,10,000/-. ₹1,00,000/- in respect of consortium and ₹25,000/- in respect of funeral expenses has been correctly allowed by the Tribunal in view of ***Rajesh and others' case (supra).*** However, there is grey area with regard to amount granted in respect of loss of love and affection as two of the claimants are minor and they would be deprived of love and affection and future guidance. So. in view of ***Rajesh and others' case (supra),*** another sum of ₹1,00,000/- stands allowed in respect of loss of love and affection. In this manner, the claimants are held entitle to claim ₹11,35,000/- as compensation. The interest granted by the Tribunal stands upheld. The liability to pay the amount shall remain the same as ordered by the Tribunal. The appeal stands partly accepted to the extent mentioned above.

Disposed of.

JULY 31, 2015 **(K. C. PURI)**
shalini **JUDGE**