IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.2216 of 2011 (O&M) and
XOBJC No.13-CII of 2012 (O&M).
Date of Decision: 12.02.2016.

Oriental Insurance Company Ltd. ....Appellant.

VERSUS

Smt. Savita and others ....Respondents.

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CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Akashdeep Singh, Advocate
for respondents No.1 and 2/claimants-cross objectors.

Mr. Sudesh, Advocate for
Mr. Arvind Kashyap, Advocate for respondents No.3 and 4.

Mr. K.K. Chaudhari, Advocate for respondent No.5.

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SNEH PRASHAR, J.

This was an appeal filed by the appellant-insurance company assailing the award dated 13.12.2010 passed by Motor Accident Claims Tribunal, Sonepat (for short, “the Tribunal”) in MACT Petition No.55 of 2009 by virtue of which the legal heirs (claimants-respondents No.1 and 2) of deceased Pradeep Kumar, who lost his life in a motor vehicular accident, were awarded compensation.

The claimants (respondents No.1 and 2 herein) have also filed cross objections seeking enhancement of compensation.

The facts which need elaboration are as under:-

On 18.04.2009, Pradeep Kumar (since deceased) was going to Baddi from Pinjore by means of his motorcycle no.HR-49A-3275. When he reached at Nalagarh Road, a bus bearing registration No.HR-68-3860 (hereinafter referred to as "the offending bus") being driven rashly and negligently by Pal Singh alias Inder (respondent No.3) came from the side of Nalagarh and dashed its right side into the motorcycle. Respondent No.3 left the offending bus at the spot and ran away. Because of the impact, Pradeep Kumar fell down and sustained injuries. Naresh Kumar son of Ram Niwas, eyewitness of the accident, shifted him to Gupta Hospital, Baddi from where he was referred to Community Health Centre, Kalka but he succumbed to the injuries.

A First Information Report No.64 dated 18.04.2009 under Sections 279 and 304-A of the Indian Penal Code was registered at Police Station Pinjore on the report lodged by Naresh Kumar in respect of the accident.

A petition claiming maintenance under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by Savita-widow and Dhruv-son (claimants) of deceased Pradeep Kumar impleading driver, owner and insurer of the offending bus. Respondents contested the petition by filing separate written statements.

On the rival contentions of the parties, following issues were settled:-

1. Whether the accident resulting into death of Pradeep Kumar took place on account of rash and negligent driving of Bus No.HR-68-3860 by the respondent no.1, as alleged? OPP.

2. Whether the petitioners are entitled to get compensation, if so, to what amount and from whom? OPP.

3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of the accident and the insured violated the terms and conditions of the insurance policy, as alleged, if so to what effect? OPR-3.

4. Relief.

Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, the learned Tribunal awarded compensation to the tune of Rs.8,27,840/- to the claimants holding the respondents (driver, owner and insurer of the offending bus) jointly and severally liable for payment of the same.

Feeling aggrieved by the award passed by the Tribunal, the appellant-insurance company has filed the instant appeal and claimants Savita and Dhruv have filed cross objections seeking enhancement of the compensation amount.

The submissions made by Mr. Ashwani Talwar, learned counsel for the appellant, Mr. Akashdeep, learned counsel for respondents No.1 and 2, Mr. Sudesh, learned counsel for respondents No.3 and 4 and Mr. K.K. Chaudhari, learned counsel for respondent No.5 have been heard and record perused.

This Court vide order dated 18.03.2011, observing that inspite of the order of transfer passed in T.A. No.198 of 2010 dated 04.01.2011, the Tribunal at Sonepat has passed an award for the widow and children, when for the same accident the petition filed by the mother was still pending before the Tribunal at Panchkula and that the only grievance of the insurance company is that there may not be a duplication of award before the Tribunal at Panchkula, ordered suo motu transfer of the MACT Case No.47 of 2009 to this Court which was directed to be tagged along with the instant appeal.

Thereafter, on 19.11.2013 this Court passed the following order:-

> *"Apart from the case filed by the widow and child of the deceased person which is the subject of appeal in the above FAO, it appears that the mother of the deceased had independently filed a case and when it was reported it was pending, I had directed the transfer of that case to this Court. Registry informs that the case which was pending before the MACT Panchkula has already been disposed of. Transferring the case to this court has no meaning. It will only be appropriate that the mother who has claimed to obtain an independent award should also be brought on record. I order the impleadment of the mother Savitri Devi wife of Om Kumar H.No.118, Subhash Nagar, Post Office, HMT, Pinjore, Tehsil Kalka District Panchkula as one of the respondents.*
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> *Notice of hearing be issued to the newly impleaded party.*

Registry is directed to make necessary amendment in the Memo of Parties and show her as respondent No.5 in appeal.

The impleadment in appeal would also mean impleadment in Cross Objection."

As the matter was opened for arguments, learned counsel for the appellant-insurance company submitted that his challenge to the award is not on merits, rather the only prayer is for apportionment of the amount of award between all the legal heirs including mother of the deceased namely Savitri Devi (respondent No.5).

On the other hand, learned counsel for the claimants pointed out that learned Tribunal simply assessed the annual income of the deceased and applying multiplier to the same calculated the loss of dependency. Nothing was added to the income computing the future prospects as laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170.*** The amount awarded under the head of loss of consortium and funeral expenses was on lower side. The multiplier of '17' applied by the Tribunal is also not appropriate as the deceased was a young man aged 27 years and the deduction of 1/3rd from the income of deceased towards his personal and living expenses was too high.

PW1 Savita deposed that deceased Pradeep Kumar was employed as Junior Technician with Su-Kam Power Systems Limited and his income was Rs.6676/- per month. She tendered in her evidence the salary certificate Ex.P3 according to which the income of the deceased was Rs.6676/- per month. However, the Tribunal assessed the monthly income of the deceased as Rs.5940/- without assigning any reason. It appears that the Tribunal opted not to include the amount of Rs.454/- paid towards provident fund and Rs.282/- paid as ESI which does not appear to be justified. Accordingly, the salary of the deceased is taken as Rs.6676/-. The age of deceased Shri Pradeep Kumar was 27 years and the multiplier of 17 was rightly applied by the Tribunal. There were three dependents on the income of the deceased namely his wife Savita, son Dhruv and mother Savitri. The deceased must be spending 1/3rd of his income on himself and remaining 2/3rd of his earnings on the maintenance of the claimants and respondent No.5. Perusal of the award shows that no amount has been added to the income of the deceased towards future prospects. In view of law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170*** as the age of the deceased was 27 years, the claimants and respondent No.5 are entitled to increase in the income of the deceased by 50% towards future prospects. Accordingly, the compensation payable to the claimants is calculated as under:-

1.	Monthly income (in Rupees)		Rs.6,676/-
2.	Actual age of the deceased		27 years
3.	Increase in future income as per Rajesh and others' case (supra)		Rs.10,014/-
4.	Annual dependency		2/3 of Rs.10,014 x 12 = Rs.80,112/-
5.	Multiplier		17
6.	Total		13,61,904/-

In addition to the amount of Rs.13,61,904/- calculated towards dependency, the amount of Rs.15000/- awarded under the funeral expenses is enhanced to Rs.25,000/- whereas the amount of Rs.5000/- awarded towards loss of consortium is enhanced to Rs.1 lac. A further amount of Rs.1,00,000/- is awarded to claimant No.2 (minor son) and respondent No.5 (mother) for loss of love and affection. In the above premise, the claimants and respondent No.5 are held entitled to compensation of Rs.15,86,904/- as indicated above.

Accordingly, the appeal filed by the appellant-insurance company is disposed of and the cross objections filed by cross objectors-claimants are partly allowed. The award dated 13.12.2010 passed by the Tribunal is modified. The cross objectors-claimants are held entitled to enhanced compensation of Rs.7,59,064/- in addition to the amount of Rs.8,27,840/- awarded by the Tribunal. The enhanced amount of compensation shall be deposited by the appellant-insurance company within 45 days from the date of receipt of certified copy of this judgment failing which the cross objectors-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of order till realization. The amount of compensation will be disbursed to the cross objectors-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

12.02.2016.
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