IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) FAO-638-2012 (O&M)
Date of Decision: 13.05.2016

Ramesh Kumar Verma and others
...Appellants

Versus

Ajay Kumar and others

...Respondents

(2) FAO-1175-2012 (O&M)
Date of Decision: 13.05.2016

ICICI Lombard General Insurance Co. Ltd.
...Appellant

Versus

Ramesh Kumar Verma and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Jaideep Verma, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for Insurance Company.

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<u>JITENDRA CHAUHAN, J.</u>

Two cross appeals, noticed above, are being disposed of by this single judgment, having arisen out of the common impugned Award dated 09.11.2011, passed by learned Motor Accidents Claims Tribunal, Ropar (for short, 'the Tribunal').

2. The learned Tribunal, after appreciating the oral as well as documentary evidence brought on record by the parties, allowed the claim petition and a sum of Rs.8,85,000/-, was awarded towards compensation.

3. Feeling aggrieved, the Insurance Company has preferred FAO No.1175 of 2012, praying for dismissal of the claim petition, whereas, the claimants have preferred FAO No.638 of 2012, seeking enhancement of the amount of compensation.

4. The learned counsel for the appellants contends that the deceased was aged 20 years at the time of his death in the accident, therefore, the multiplier of 11 has been wrongly applied. The income of the deceased has been wrongly assessed as Rs.10,000/- per month, whereas, it has been duly proved on record that the deceased was running a goldsmith shop and earning Rs.20,000/- to Rs.25,000/- per month. It is further contended that nothing has been awarded towards the heads of future prospects and love and affection, wheras, an increase of 50% ought to have been awarded towards future prospects of the deceased keeping in view his age i.e. 20 years, in terms of ***Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54*** .

5. On the other hand, the learned counsel for Insurance Company submits that no evidence has been led to prove the fact that deceased was earning Rs.10,000/- per month. The deceased is alleged

to be a goldsmith, however, no account books were produced before the learned Tribunal, therefore, the learned Tribunal erred in assessing the monthly income of the deceased. The deduction towards personal expenses of the deceased to the extent of 1/3rd has been wrongly assessed by the learned Tribunal, whereas, it ought to have been 50% of his income.

6. I have heard the learned counsel for the parties and perused the record.

7. Learned Tribunal has rightly assessed the income of the deceased at Rs.10,000/- per month, as he was a goldsmith by profession. PW-3, Mahender Pal Verma, who is uncle of the deceased, PW-4, Jit Ram and PW-5, Sunil Kumar Verma have deposed to this effect. However, it cannot be believed in the absence of any documentary proof that the deceased was earning Rs.20,000/- to Rs. 25,000/- per month. Keeping in view the fact that the deceased was engaged as gold smith, he can safely be treated as a skilled labourer, therefore, the learned Tribunal has correctly taken the monthly income of the deceased as Rs.10,000/-.

8. In ***Amrit Bhanu Shali Vs. National Insurance Co. Ltd. (SC), 2012(4) R.C.R. (Civil) 343,*** Hon'ble the apex Court was pleased to hold that in a case relating to the death of a bachelor, the basis for determination of multiplier should be the age of the deceased and not that of the claimant(s).

9. It is evident from the perusal of the case file that deceased was 20 years of age at the time of the accident. The learned Tribunal has applied multiplier of 11 keeping in view the age of the father. In the present case, the deceased was a bachelor. Therefore, the multiplier of 11 applied by the learned Tribunal is increased to 18, keeping in view the age of the deceased and law laid down in ***Amrit Bhanu Shali's*** *case (supra)*. Furthermore, an increase of 50% in the income of the deceased is ordered towards future prospects, keeping in view the law laid down by Hon'ble the apex Court in ***Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54***. Since, the deceased was bachelor at the time of accident, he might be spending 50% of his income on himself and rest of the amount on his parents. From the perusal of the record, it reveals that the Tribunal has wrongly made deduction to the extent of 1/3rd whereas, as per the law laid in **Munna Lal Jain and another** Vs. **Vipin Kumar Sharma and others**, 2015 (3) RAJ, 459, the deduction of 50% in respect of personal expenses is required to be made. So, the 50% deduction towards personal expenses is ordered to be made.

10. In this way, the compensation on account of loss of dependency would come to Rs.10,000/- + 50% X 12 X ½ X 18 = Rs.16,20,000/-, as against the amount of Rs.8,85,000/-, assessed by the learned Tribunal.

11. Furthermore, an amount of Rs.1,00,000/-, is awarded to

the claimant-mother of the deceased, towards 'loss of love and affection', in view of the law laid down by Hon'ble the apex Court in ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013-3) PLR 776***, whereas, another amount of Rs.15,000/- is awarded for 'funeral expenses'.

12. In view of the above, the claimant-appellants are held entitled to the enhanced compensation of Rs.8,55,000/- [Rs.7,90,000/- (enhancement towards 'loss of dependency') + Rs.1 lakh 'towards loss of love and affection' + Rs.15,000/- (towards funeral expenses)], as indicated above, over and above the amount already awarded by the learned Tribunal, which shall be payable within a period of 45 days from the date of receipt of a certified copy of this judgment, failing which, they shall also be entitled to interest @ 7.5% per annum, from the date of filing the present appeal, till its realization. However, the amount towards future prospects shall be released in favour of the claimant/appellants on their furnishing indemnity bonds since the matter with regard to future prospects is pending adjudication before Hon'ble the Supreme Court in SLP (Civil) No.16735 of 2014.

13. As a consequence of the above discussion, FAO No.1175 of 2012, preferred by the appellant-Insurance Company, is partly accepted only to the extent of deduction of 50%. FAO No.638 of 2012, filed by the claimant-appellant, is also partly allowed and the

impugned award is modified to the extent indicated above.

14. The statutory amount of Rs.25,000/-, deposited by the appellant-Insurance Company be placed at the disposal of the Tribunal for disbursement.

13.05.2016 **(JITENDRA CHAUHAN)**
sumit.k **JUDGE**