IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1698 of 2016 (O&M)
Date of Decision: May 09, 2016

Magma HDI General Insurance Company Ltd. ...Appellant

Versus

Vinod Kumar and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. C.R. Ola, Advocate,
for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (Magma HDI General Insurance Company Ltd.) against the Award passed in MACT Case No.152 of 2014 by the Motor Accident Claims Tribunal, Hisar (for short `the Tribunal') on account of the death of Ishwar Singh in a vehicular accident.

Brief facts of the case are that on 30.05.2014, Ishwar Singh (deceased) and Vijay Singh were talking to a fruit-seller regarding purchase of watermelons which were stored 15 feet away from the road, i.e. in front of National Bagwani, Hansi road, Barwala. In the meantime, a truck bearing registration No.HR-61/2407 (hereinafter referred to as `the offending vehicle'), driven by respondent No.1 in a rash and negligent manner came from Barwala side and hit Ishwar Singh, standing on the *kacha* portion of the road. Due to the impact Ishwar Singh received multiple injuries and died at the spot.

Widow of deceased Ishwar Singh and his two sons filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was a pensioner, having retired as a teacher. He was aged about 69 years and was getting pension of Rs.14,000/- per month. Besides he was also earning Rs.5,00,000/- per year by doing agriculture work.

Upon notice, respondents No.1 and 2 (driver and owner) filed joint written statement controverting the case of the claimants and stating that their vehicle was falsely implicated in the case. Appellant – insurer filed separate written statement and pleaded collusion of the claimants and respondents No.1 and 2, besides taking other pleas.

Pleadings of the parties led to the framing of following issues:-

"*1. Whether accident in question occurred due to rash and negligent driving of the offending vehicle truck bearing No. HR-61-2407 by respondent No.1? OPP*

2. Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent? OPP.

3. Whether the present petition of the petitioners is not maintainable in law? OPR

4. Relief."

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No.HR-61-2407 by respondent Vinod Kumar. The Tribunal assessed the income of deceased at Rs.16,838/- per month i.e. Rs.2,02,056/- per annum. Considering the number of dependants (3) it deducted $1/3^{th}$ towards personal and living expenses of the deceased. Multiplier of 5 was applied and total loss of income was assessed at Rs.6,73,520/-. Besides, Rs.1,00,000/- for loss of consortium, Rs.1,00,000/- for loss of love and affection for the children, Rs.25,000/- for cost of litigation and Rs.25,000/- for funeral expenses were also awarded.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

Ld. Counsel has argued that the finding of the Tribunal regarding involvement of vehicle in question is erroneous. He further contended that since the deceased was a retired teacher, drawing pension of Rs.14,838 and after his death, his wife is getting family pension of Rs.11,000/- after making some deductions, therefore, the amount received by widow as family pension should have been deducted while assessing the loss of income. He further contended that the Tribunal has wrongly assessed the loss of Rs.2,000/- per month under the head of `loss of Supervision of agriculture land'.

So far as the argument regarding involvement of the offending vehicle in the accident is concerned, FIR No.211 under Sections 279, 304-A, etc. IPC was registered in Police Station Barwala on the day of the accident itself i.e. 30.5.2014, against respondent No.1 - driver of the offending vehicle. It has also come in evidence that the case was investigated by the Police and report under Section 173 Cr.P.C was submitted to the Ilaqa Magistrate against respondent No.1.

Appreciating the above evidence, the Tribunal has rightly recorded a finding regarding involvement of the offending vehicle.

Coming to the argument of deduction of family pension being received by the widow of the deceased, while assessing the loss of income, it is a settled law that family pension is not to be excluded while assessing the loss of dependency. Reference may be made to **Sukhdev Singh @ Sukha Vs. Manjit Kaur and others 2009 (1) PLR 10 (P&H), Nirmala Singhvi & Ors. Vs. Govardhan Dhruv & Ors. 2007 AIHC 3086, Lal Dei & Ors. Vs. Himachal Road Transport 2007(8) SCC 319** and **United India insurance Co.Ltd. Vs. Patricia Jean Mahajan AIR 2002 (SC) 2607.**

Undisputedly, the evidence brought on record has proved that the deceased, besides getting pension after retirement, was also engaged in agriculture. He owned 8 acres of Nahari land. Though, after his death, the land has been transferred in the name of the claimants, but the contribution of the deceased towards management of the agricultural land, is lost and it is this loss, which the tribunal has assessed at Rs.2000/- per month. No fault can be found with this assessment.

No other point was argued.

Appeal is dismissed.

May 09, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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