In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 14.12.2016

FAO NO. 6610 of 2014

Shri Ram General Insurance Company Limited

---Appellant

versus

Vinita Gupta and others

---Respondents

FAO NO. 698 of 2015

Vinita Gupta and others

---Appellants

versus

Shamsher Singh and others

---Respondents

FAO NO. 7467 of 2014(O&M)

Vinita Gupta

---Appellant

versus

Shamsher Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sanjeev Goyal, Advocate
for the appellant in FAO No. 6610 of 2014
for respondent No. 3 in FAO Nos. 7467 of 2014
and 698 of 2015

Mr. Ashwani Arora, Advocate
for the appellants in FAO Nos.7467 of 2014
and 698 of 2015
for respondent Nos. 1 to 5 in FAO-6610 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos. 6610 of 2014, 698 of 2015 and 7467 of 2014, detailed hereinabove, as these have emerged out of the same accident that took place on 7.10.2012 resulting in death of Sh. Vishnu Gupta and his daughter Komal Gupta.

The Motor Accidents Claims Tribunal, SAS Nagar Mohali (in short "the Tribunal") awarded compensation to the tune of Rs. 47,61,576/- in regard to death of Vishnu Gupta, detailed hereunder:-

Loss of income per annum-Rs. 3,37,974/-

Future prospects -30%

deduction = 1/3rd

multiplier-16

loss of dependency Rs. 46,86,575/-

funeral expenses, loss of estate and loss of consortium-

Rs.25000/-each

The Tribunal awarded an amount of Rs. 2 lakhs in respect of death of Komal Gupta aged about 7 ½ years.

The parties shall be referred to as 'the claimants' and 'the insurance company' for the sake of convenience.

FAO Nos. 6610 of 2014 and 698 of 2015

Counsel for the insurance company has submitted that the learned Tribunal assessed income of the deceased on the basis of income tax return (in short "ITR") for the assessment year 2011-12 (Ex. P16) wherein annual income of the deceased is mentioned to be Rs. 3,40,920/- with liability to pay income tax of Rs. 2,946/-. It is argued with vehemence that ITRs marked as exhibits were not proved, in accordance with law. The latest ITR Ex. P-16 does not bear signatures of Vishnu Gupta when the earlier ITRs are purported to be so signed by the deceased. The ITR for the assessment year 2011-12 could be filed by the deceased till the year 2013 but as per seal of the Income Tax Department, the same was filed in April 2011. In the ITR Ex. P-16, deduction to the extent of Rs. 152,320/- has been shown under Section 80(CCD) but the said provision pertains to deduction under a pension scheme. The claimants did not produce on record the challan with regard to payment of income tax nor any document with regard to claiming deduction to the extent of Rs. 1 lakh under Section 80(c)of the Income Tax Act. It is vehemently argued that in view of these discrepancies, it can safely be concluded that ITR Ex. P-16 is not worthy of reliance for the purpose of assessment of income of the deceased whereas in the earlier ITR for the assessment year 2010-11, gross income of the deceased is shown to be Rs. 2,50,470/-. It is further argued that compensation qua loss of dependency, at best, may be assessed, on the basis of ITR Ex. P-12 and the documents appended thereto, Exs. P-13 and P-14.

Counsel for the claimants, on the contrary, has supported the award by taking into consideration the latest ITR Ex. P-16 for the purpose of assessment of income of the deceased. It is argued that the insurance company had ample opportunity to rebut testimony of Vinita Gupta and documents marked as exhibits in her statement but the insurance company did not adduce any evidence, therefore, cannot be heard to say that ITR Ex. P-16 is either not admissible or cannot be relied upon. However, it has been argued that the Tribunal has allowed benefit of future prospects to the extent of 30% in place of 50% as the deceased was less than 40 years of age. As the deceased left behind his widow, two minor children and mother being dependent upon his earnings, admissible deduction would be $1/4^{th}$ in place of $1/3^{rd}$. Further argued that compensation awarded under conventional heads needs enhancement.

I have heard counsel for the parties, perused the paper book and the records.

Vinita Gupta, one of the claimants appeared in the witness box and tendered into evidence various documents including acknowledgment of ITR 2008-09 (Ex. P-5), Copy of ITR 2008-09 (Ex. P6), copy of computation 2008-09 (Ex. P-7), computation counter foil of payment of tax of 2008-09 (Ex. P-8), acknowledgment of ITR 2009-10 (Ex. P-9), copy of ITR for 2009-10 (Ex. P-10)(10 pages), copy of computation of 2009-10(Ex. P-11), acknowledgment of ITR 2010-11 (Ex. P-12), copy of ITR 2010-11 (P-13), copy of computation of 2010-11 (Ex. P-14), acknowledgment of ITR 2011-12 (Ex. P-15), copy of computation of 2011-12 (Ex.16) and copy of ITR 2011-12 (Ex. 17) and copy of computation of 2011-12(Ex. P-17)(11 pages). All these documents were objected to qua mode of proof and authenticity by counsel for the insurance company before starting cross examination of Vinita Gupta. Despite the insurance company having raised an objection with regard to mode of proof and authenticity of the documents, the claimants did not examine any witness from income tax department to prove the ITRs particularly the latest ITR which admittedly does not bear signatures of the deceased.

Counsel for the claimants has not offered any explanation as to why the latest ITR (Ex. P-16) does not bear signatures of Vishnu Gupta when the earlier ITRs have been so singed by the deceased. This apart, under Section 140 of the Income Tax Act, it is an obligation of the assessee to sign the ITR. A relevant extract from Section 140 of the Act, reads thus:-

> **"Return by whom to be verified.**
>
> The return under Section 115 WD or Section 139 shall be verified-.
>
> (a) in the case of an individual.-
>
> (i) by the individual himself;

(ii)where he is absent from India, by the individual himself or by come person duly authorized by him in this behalf;

(iii)where he is mentally incapacitated from attending to his affairs by his guardian or any other person competent to act on his behalf; and

(iv)where, for any other reason, it is not possible for the individual to verify the return, by any person duly authorized by him in his behalf;

xxxx xxxx xxxx."

Similarly, counsel for the claimants has failed to explain deduction of Rs. 52,320/- under Section 80 (CCD). Undoubtedly, if somebody has claimed wrong or excess deduction, the same may not adversely affect claim qua income of the deceased before the Tribunal but this fact assumes relevance and greater significance in the circumstances that the latest ITR does not bear signatures of the deceased nor the claimants have produced on record copy of the challan as an evidence of deposit of Rs. 2,946/- towards income tax. The claimants have also not produced the documents with regard to deduction to the extent of Rs. 1 lakh under

Section 80(C) of the Act. Taking into consideration the discussion made hereinbefore, I find merit in contention of the insurance company that the ITR Ex. P-16 is not worthy of credence and reliance for the purpose of assessment of income of the deceased to compute loss of dependency. However, counsel for the insurance company has not pointed out any discrepancy in the ITR for the year 2010-11, according to which annual income of the deceased after deducting liability t of income tax would be Rs. 2,48,505/-.

There is no dispute that the deceased was 34 years old at the time of death. As the deceased was less than 40 years of age, addition in income for future prospects would be 50% in place of 30%, in the light of judgment of Hon'ble the Supreme Court of India ***Rajesh and others vs. Rajbir Singh and others 2013 (3) RCR (Civil) 170.*** It is also undenied that the deceased left behind his widow, two minor children and mother. As all the four are held to be dependent upon the deceased, admissible deduction would be $1/4^{th}$ in place of $1/3^{rd}$. In view of the above, compensation for loss of dependency is calculated at Rs. 2,48,505 x 16 = 39,76,080 +19,88, 040 (50%)=59,64,120 -14,91,030($1/4^{th}$)=**Rs.44,73,090/-**.

Compensation at the rate of **Rs. 25000/-** each awarded by the

Tribunal for funeral expenses and loss of estate is affirmed. An amount of **Rs. 1 lakh** for loss of consortium to the widow, **Rs. 1.5 lakh** in equal share to the minor children and **Rs. 50,000/-** to the mother for loss of love and affection is awarded. The total compensation comes to **Rs. 48,23,090/-**.

The additional amount of **Rs.61,514/-** shall be payable exclusively to children of the deceased. It shall carry interest at the rate of 7.5% per annum from the date of petition till realization. The additional amount shall be kept in a fixed deposit receipt for a period of three years or till they attain the age of majority, whichever is later.

The appeal filed by the claimants is hereby allowed in the aforesaid terms.

FAO No. 7467 of 2014

The Tribunal awarded an amount of Rs. 1,50,000/- by way of compensation and Rs. 50,000/- as conventional figure and computed total compensation to the tune of Rs. 2,00,000/-.

The deceased was 7½ years of age at the time of occurrence that took place on 7.10.2012. Hon'ble the Supreme Court of India in **Krishan Gopal vs Lala 2013(4) RCR(Civil) 276** awarded compensation to the extent of Rs. 5 lakhs in regard to death of a child aged about 10 years in an accident that occurred in the year 1992. Taking a clue from the judgment in **Krishan Gopal's case (supra)** coupled with that a period of more than two decades has elapsed in between and there is rise in price index, interest of justice would be served if the claimant is awarded an amount of Rs. 5 lakhs for compensation. The additional amount of Rs. 3 lakhs shall be payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.12.2016
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No