IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4935 of 2016 (O&M)
Date of Decision: 27.08.2016

Cholamandalam MS General Insurance Co. Ltd. ...Appellant

Vs.

Santosh Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

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

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<u>Amol Rattan Singh, J (Oral)</u>

<u>FAO No.4935 of 2016</u>

This appeal has been filed by the insurance company that had insured the “offending vehicle”, i.e. a truck bearing registration No. HR-58-A-2868, which met with an accident with a motorcycle bearing registration No.CG-13-S-7186, on which two persons, i.e. a father and son, were travelling and unfortunately both lost their lives.

Two separate claim petitions were filed by the same claimants.

2. MACT case No.11 of 19.03.2015 (out of which this appeal arises) relates to the death of the father, i.e. Rajinder Kumar, who is stated to

have been 47 years old and was shown to have been running a foundry from which it was claimed that he was earning Rs.25,000/- per month. However, the learned Tribunal, on the basis of the income tax returns filed, held that his annual income could not be taken to be more than Rs.1,58,970/- per annum, or approximately Rs.13,200/- per month.

Accordingly, taking the aforesaid amount as his correct income, the Tribunal added 30% of that amount to the said income by way of loss of future prospects of an increased income, from which a deduction of 1/4th was made towards the personal expenses of the deceased, in terms of the judgment of the Supreme Court in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121. Thereafter, a multiplier of '13' was applied, eventually arriving at the loss of dependent income to the claimants to be Rs.20,14,870/-. Rs.1 lac was awarded by way of consortium to appellant No.1 (Santosh Devi widow of the deceased) and another Rs.1 lac awarded to the children of the deceased of whom appellant No.3 was a minor (aged 17 years), on account of the loss of care and guidance of their father, with appellant No. 2 being a 19 year old girl. Rs.25,000/- was awarded towards funeral expenses.

3. Mr. Malhotra, learned counsel for the appellant-insurance company, submits that the Tribunal has erred in adding loss of prospects of an increased income, in view of the fact that the deceased was not in any permanent employment. Otherwise, learned counsel, on query of the Court, fairly admits that the other components of the Award have not been disputed,

in view of the law settled on the issue.

4. Having heard learned counsel for the appellant, I find myself unable to agree with his contention, in view of the fact that admittedly, the deceased was running a foundry and was filing his income tax returns.

As already noticed, the income from such foundry is shown to be Rs.13,247/- per month (approximately Rs.1,58,964/- per annum), which is not found to be excessive in any manner. I also do not see as to why the deceased should not be taken to have been in permanent employment, he being the owner a foundry, who was duly filing his income tax returns in respect of the income earned therefrom.

He was obviously caring for his family from that industry, and with his wife and children (aged 19 years and 17 years) being dependent upon him, it would show that he had been regularly earning for his family and himself. Therefore, I see no reason to treat such an avocation to be not permanent employment.

Hence, I find no error in the Award of the Tribunal, in adding 30% of the assessed income of the deceased towards loss of future prospects of an increased income, even for the reason that there was no evidence led to the contrary, pointing to any constant dip in the income of the deceased, from his industry. As such, in my opinion, there would be no reason to presume that (even simply on the basis of inflation alone), his income would not have increased.

5. No doubt, the issue has been referred to a larger Bench by the

Supreme Court in the case of **National Insurance Co. Vs. Pushpa and others**, (2015) 9 SCC 166. The issue which has been referred to the larger Bench, is as to when a deceased was not in permanent employment, would it be justified to add any loss of future prospects of income to his existent income. Accordingly, in the case of those who are shown to be in employment on daily wages, this Court has been assessing loss of future income, on the touchstone of law laid down in **Smt. Sarla Vermas'** case (supra) read with **Rajesh and others vs. Rajbir Singh and others,** (2013) 9 SCC 54, but has been directing that the said component of the compensation would not be disbursed to the claimants and instead, the insurance company would deposit the said amount with the Tribunal, which is then to get the amount deposited in a Nationalized Bank, till the ratio of the judgment of the hon'ble Supreme Court, in **Pushpas' case** (supra) (larger Bench) is pronounced. Depending thereupon, the amount deposited by the insurance company would be either disbursed to the claimants by the Tribunal in execution proceedings, or would be refunded to the insurance company.

However, as already said, in the present case, the deceased admittedly was running an industry with no decrease in income shown. Therefore, I do not see why he should not be taken to have been in permanent employment.

Consequently, finding no merit in the appeal, it is dismissed in *limine,* with no order as to costs.

Civil Misc. No.16904-05-CII of 2016

Since the appeal itself has been dismissed on merits, the question of condoning the delay in filing/re-filing the appeal is rendered academic and need not be gone into.

August 27, 2016 **(AMOL RATTAN SINGH)**
vcgarg/nitin **JUDGE**