IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7024 of 2015 (O&M)
and Cross Objection No.77-CII of 2016
Date of decision: 20.05.2016

Shriram General Insurance Co. Ltd.

...Appellant

Versus

Deeksha Rathor and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Punit Jain, Advocate
for the appellant-Insurance company.

Mr. Atul Yadav, Advocate
for respondent Nos.1 to 7 - Cross objectors.

Mr. Rajesh Bhateja, Advocate,
for respondent No.8

Mr. G.C.Shahpuri, Advocate
for respondent No.9.

JITENDRA CHAUHAN, J. (Oral)

CM No.21979-CII of 2015

Prayer in this application under Section 5 of Limitation Act is for condoning the delay of 150 days in filing the appeal.

For the reasons mentioned in the application, the delay of 150 days in presenting the appeal is hereby condoned subject to all just exceptions.

Main appeal:

The present appeal has been filed by the appellant-Insurance Company, challenging the impugned Award dated 31.01.2015, passed by learned Motor Accidents Claims Tribunal, Gurgaon (for short, 'the Tribunal') whereby the claim petition filed by the cross objector was accepted. The cross-objections have been filed by the claimants/respondent Nos.1 to 7 for enhancement of compensation.

Learned counsel for the appellant-Insurance Company contends that at the time of accident, the deceased was 23 years of age. The learned Tribunal has wrongly deducted 1/4th instead of 1/3rd as personal expenses from the income of the deceased in view of the judgment of ***Smt. Sarla Verma Vs. Delhi Transport Corporation (SC), 2009(3) R.C.R. (Civil) 77.*** The brothers and sisters should not be treated as dependent upon the deceased.

He further contends that learned Tribunal has committed a grave error in awarding compensation towards future prospects since the matter is pending adjudication before Hon'ble the Supreme Court.

Per contra, the learned counsel for the cross-objectors/respondent Nos.1 to 7 has contended that the deduction should have been 1/5th instead of 1/4th, keeping in view the number of dependents i.e. 7. It is further contended that nothing has been awarded towards loss of love and affection to mother of the deceased.

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

As per the statement of PW-2 Deeksha Rathore, she has admitted in her cross-examination that Rajesh Kumar (father of the deceased) is a fruit vendor and he is self employed and is residing with his wife and children and maintaining their day to day needs.

Keeping in view of the statement of PW-2, only respondent No.1(widow) and respondent No.2 (mother) were dependent on the income of the deceased. In these circumstances, this Court feels that as per judgment of ***Smt. Sarla Verma Vs. Delhi Transport Corporation (SC), 2009(3) R.C.R. (Civil) 77.***, the deduction ought to have been 1/3rd instead of 1/4th. It is ordered accordingly.

In this way, the amount of compensation under the head 'loss of dependency' would come to ₹5,000/- x 50% x 12 x 2/3 x 18 = ₹10,80,000/-, as against ₹12,15,000/- awarded by the learned Tribunal.

Furthermore, this Court feels that it has been rightly awarded the future prospects in view of the judgment of ***Sarla Verma's case*** (Supra). However, the matter being pending adjudication before Hon'ble the Supreme Court in *SLP No. 16735* *of 2014, t*he disbursement of the amount of future prospects shall be subject to furnishing of requisite indemnity bonds by the claimants/respondent Nos.1 and 2.

As regards the cross-objection filed by the claimants, it is observed that in view of the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, (2013-3) PLR 776*** an amount of Rs.1,00,000/- is granted to the mother of the deceased for 'loss of love and affection', if she is alive, on her furnishing affidavit.

In view of the observations recorded in the appeal filed by the Insurance Company, the findings with regard to deduction shall be read as part of this judgment. The amount under the head 'loss of love and affection' is raised to Rs.1 lac payable to mother of the deceased only. The cross-objections are allowed partly to the extent indicated above. Thus, the claimants/respondent Nos.1 and 2 are entitled to receive compensation of Rs.13,05,000/- [(Rs.10,80,000/- (towards loss of dependency) + Rs.1,00,000/- (loss of consortium payable to widow of the deceased)+ Rs.1,00,000/- (enhancement towards loss of love and affection payable to mother of the deceased only) + Rs.25,000/- (towards funeral expenses)] as against the amount of Rs.13,40,000/- awarded by the Tribunal. Thus, the compensation amount is reduced by Rs.35,000/-. Now the payable amount of compensation shall be Rs.13,05,000/- instead of Rs.13,40,000/- awarded by the learned Tribunal.

With the aforesaid modification in the impugned award, the FAO No.7024 of 2015 and Cross objection No.77-CII of 2016, are partly allowed.

The statutory amount, if any, deposited at the time of filing this appeal, be placed at the disposal of the learned Tribunal for reimbursement.

20.05.2016 **(JITENDRA CHAUHAN)**
hemlata **JUDGE**

Note : Whether to be referred to Reporter : Yes / No.