IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2136 of 2010 (O&M)

Date of Decision:15.11.2017

Bajaj Allianz General Insurance Company Limited

.......Appellant

Versus

Smt. Bhawna Devi and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Sandeep Kotla, Advocate
for the respondents.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 25.01.2010 passed by the Motor Accidents Claims Tribunal, Fatehabad, (for short 'the Tribunal').

On 10.11.2008 in a motor vehicular accident involving the car bearing registration No. UP-14-C/0188 and truck bearing registration No. HR-39-A/5618 (for short 'the offending vehicle'), Bansi Lal aged 32 years lost his life. At the time of accident, he was driving the car. The accident occurred at 3: 30 a.m. in the morning.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, two minor children and parents of the deceased. The Tribunal after considering the evidence and witnesses, awarded a sum of Rs.35,47,608/- alongwith interest at the rate of 9% per annum.

The present appeal has been filed by the Insurance Company challenging the quantum of compensation and also on the ground that it was a case of contributory negligence.

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

Learned counsel for the Insurance Company has a grievance that when the deceased was 32 years of age and was in a private employment, future prospects of 50% has been wrongly awarded rather it should have been lesser. He further argued that the car driven by the deceased hit the truck from behind and hence it is a case of contributory negligence.

Learned counsel for the respondents-claimants defended the award and argued that the amounts awarded under conventional heads are on the lower side and needs to be enhanced. With regard to future prospects, he defended the award but could not raise any serious objection in view of the latest decision of Hon'ble the Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others*** ***Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.*** He further argued that the present was not a case of contributory negligence.

The contention of learned counsel for the appellant that there was a contributory negligence has no substance and needs to be rejected.

The claimants were able to prove rash and negligent driving of the offending vehicle by producing PW2 Jaswant Singh, who was an eye witness to the accident and was travelling in the same car. The claimant Smt. Bhawna Devi who was also travelling in the same car also deposed as PW3 before the Tribunal. FIR No. 373 dated 10.11.2008 was registered and driver of the offending vehicle was charge sheeted.

It was proved on record that the offending truck was going ahead of the car and it suddenly applied break and turned towards a road side Hotel, as a result the car banged into the truck.

Learned counsel for the Insurance Company is not in a position to point out any defect in the finding of the Tribunal as no evidence rebutting the claim of the claimants regarding rash and negligent driving of truck was produced before the Tribunal. Even in the cross-examination of the witnesses, nothing contrary had come on record.

It is important to note that two claim petitions were filed arising out of the same accident. The award passed in other claim petition has not been challenged by the Insurance Company, regarding contributory negligence. Both the claim petitions were decided by common award. In one case the finding of negligent driving has been accepted.

No allegation has come on record that the car was being driven in a fast speed, in absence of any such allegation, the contributory negligence cannot be attributed to the driver of the car. On the highway and that too during night time if a heavy vehicle suddenly sways side, it is virtually impossible for vehicle who is behind it to stop. It is only in some lucky cases that the driver of such a vehicle is able to stop the car in time.

There is no dispute by the parties with regard to the income assessed by the Tribunal. The salary taken by the Tribunal for calculating the loss of dependency was Rs. 16355/- per month. There is no dispute with regard to the multiplier applied for 16 and even the deduction for self expenses of 1/4th, is also not in dispute.

The only dispute is that 50% future prospects has been awarded which is more according to the aforesaid decision of Hon'ble the Supreme Court in ***Pranay Sethi and others 's case (supra),*** wherein it has been held as under:

> 61. xx xx xx xx
>
> (iv)In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
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> Xx xx xx xx

As per the above decision, in case the deceased is below 40 years and employed on fixed salary, future prospects of 40% of the established income has to be awarded.

Keeping in view the above facts, the loss of dependency is re-calculated as under:

16355 + (6542) 40% (plus future prospects) = 22897/-

22897 x 12 = 2,74,764

1/4th deduction for self expenses: 68,691/-

multiplier of 16: 206073 x 16 = 32,97,168/-

It would be pertinent to mention here that a sum of Rs. 15,000/- has been awarded under the conventional heads i.e. Rs.10,000/- for funeral expenses and Rs.5000/- for loss of consortium. Since the proceedings are under the welfare legislation and it is the duty of the Court to award just and equitable compensation. In such circumstance, it would be appropriate that the conventional heads are enhanced to Rs.70,000/- i.e. Rs.15,000/- for loss of estate, Rs.15,000/- for funeral expenses and Rs.40,000/- for loss of consortium. The said amounts are being awarded in consonance with the decision of Hon'ble the Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others 's case (supra).***

The award dated 25.01.2010 is modified to the extent that an amount of Rs. 35,47,608/- awarded is reduced to Rs.33,67,168/-.

As there was a stay granted beyond Rs. 20 lacs, the claimants would be entitled to balance amount along with interest as awarded by the Tribunal.

(AVNEESH JHINGAN)
15.11.2017 **JUDGE**
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No