In the High Court of Punjab and Haryana at Chandigarh

FAO No. 6229 of 2011 (O&M)
Cross Objection No. 169-CII of 2015
Date of Decision:26.7.2017

Shri Ram General Insurance Company Limited

---Appellant

vs.

Ramesh Kumari and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sandeep Kotla, Advocate
for the appellant

Mr. Vinod Gupta, Advocate
for the claimants-cross objectors

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Rekha Mittal, J.

This order will dispose of FAO No. 6229 of 2011 and Cross Objection No. 169-CII of 2015 as these have emerged out of award dated 2.8.2011 passed by the Motor Accidents Claims Tribunal, Sangrur (hereinafter to be referred to as "the Tribunal").

Ramesh Kumari and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short "the Act") for grant of compensation on account of death of Vikramjeet @ Vicky son of Krishan Kumar in a motor vehicular accident that took place on 9.1.2010.

The Tribunal assessed income of the deceased at Rs. 16,500/-, deducted 1/4th towards personal and living expenses of the deceased, adopted a multiplier of 16 to compute loss of dependency at Rs. 23,76,000/-, payable with interest at the rate of 8% per annum.

Counsel for the appellant (insurance company) would submit that the Tribunal has wrongly assessed income of the deceased at Rs. 16,500/- per month. It is argued that Vijay Kumar AW3 and Sanjiv Kumar AW-4 examined to prove employment and salary of Vikramjeet @ Vicky did not produce any record of M/s Navjyoti Rice Mill and M/s PR Gram Udyog Samiti to establish that the deceased was looking after work of aforesaid mills, stated to be sister concerns. It is further submitted that the document Ex. A1 salary account (computer generated) brought by Vijay Kumar AW-3 and salary account again (computer generated) brought by Sanjiv Kumar are not sufficient to hold that the deceased was looking after business of the aforesaid concerns at a salay of Rs. 10,000/- paid by Navjyoti Rice Mill and Rs. 6,500/- per month by M/s PR Gram Udyog Samiti. It is further argued that as the deceased was a resident of Dhuri District Sangrur and the aforesaid mills are working around Dhuri, the claimants could procure this evidence.

Counsel for the cross objectors-claimants has submitted that the Tribunal has not allowed benefit of increase in income for future prospects and no compensation has been awarded under conventional heads. It is further submitted that the claimants are entitled to benefit of increase in income to the extent of 50% and compensation under conventional heads in the light of judgments of Hon'ble the Supreme Court ***Rajesh and others vs. Rajbir Singh and others 2013(3) RCR(Civil) 170*** and ***Vimal Kanwar and***

others vs. Kishore Dan and others 2013(2)RCR (Civil) 945.

To refute contention of the appellant, it is argued that Vijay Kumar and Sanjiv Kumar have proved case of the claimants on the basis of documentary evidence. It is further argued that during cross examination, there is hardly any challenge to correctness of facts pleaded in the affidavits of aforesaid witnesses. Another submission made by counsel is that both the children of the deceased are studying in a private school and that was possible if the deceased had income as proved by the witnesses.

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

The first question for determination is whether the Tribunal has correctly assessed income of the deceased. Perusal of the record would reveal that there is no material on record with regard to qualification of the deceased. On a pointed query raised by the Court, counsel for the claimants is not in a position to say something either with regard to educational qualification of the deceased or the capacity in which he was working with the aforesaid mills. Not only this, Vijay Kumar AW-3 in his affidavit tendered by way of examination-in-chief has not stated as to since when the deceased was working with the mills or the capacity in which he was working. He has stated that Vikramjeet was looking after affairs of their mill at monthly salary of Rs. 10,000/-. Perusal of the salary account would reveal that first payment was made on 9.10.2009 by way of cash. For the succeeding months of November, December and upto 9.1.2010 payment is shown to be made in cash. Similar is the position with regard to payment of salary by PR Gram Udyog Samiti. Neither Vijay Kumar nor Sanjiv Kumar produced the account books of the mills to prove that entry was made in their records with regard to payment of salary to Vikramjeet. In these circumstances, I find merit in contention of counsel for the appellant that the claimants have failed to adduce cogent and convincing evidence to establish that Vikramjeet was working with the abovesaid mills at a salary of Rs. 16,500/- per month.

As per the settled position in law, the Tribunal has an obligation to assess just and reasonable compensation which cannot be a bonanza or a source of profit. Taking into consideration the materials on record coupled with liability of insurance company to pay compensation for future prospects, in my considerate opinion, interests of justice would be served if the claimants are allowed compensation for loss of dependency including future prospects to the tune of Rs. 16,500/- per month. In this view of the matter, loss of dependency assessed by the Tribunal is ordered to be affirmed.

The Tribunal has not awarded compensation under conventional heads. No reason has been assigned for denial of compensation in this regard despite a catena of judgments available on the issue. Taking a clue from the judgments relied upon by counsel for the cross objectors, claimants shall be entitled to following compensation under conventional heads:-

1. Loss of consortium to the widow	Rs. 1,00,000/-
2. Loss of love and affection to the children	Rs. 1,50,000/- (to be shared equally)
3. Expenses on funeral and last rites	Rs. 25,000/-
4. Loss of estate	Rs. 25,000/-
5. Loss of love and affection to mother of the deceased	Rs. 50,000/-

In view of the above, total compensation comes to Rs.

23,76,000 + 3,50,000 = 27,26,000/- and the additional amount comes to Rs. 3,50,000/-, payable with interest at the rate of 7.5% per annum from the date of petition till realization, exclusively to widow of the deceased. The same be deposited in a fixed deposit receipt for a period of three years.

Disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

26.7.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No