IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No. 119-CII of 2012 in/and
FAO No. 4110 of 2012 (O&M)
Date of Decision: July 25, 2017

ICICI LOMBARD GENERAL INSURANCE CO. LTD.
..Appellant(s)

Versus

MANJO DEVI AND OTHERS
...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Vandana Malhotra, Advocate
for the appellant.

Mr. S.S. Kharab, Advocate
for respondent nos.1 to 4.

Mr. R.K. Singla, AAG, Haryana.

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ANITA CHAUDHRY, J.

The insurance company has challenged the award dated 22.03.2012, passed by the Motor Accident Claims Tribunal, Panipat. Cross-objections have been filed by the claimants seeking enhancement in the award.

An accident had taken place on 24.11.2009. Virender was driving a motorcycle and three children in the age group of 12 were pillion riders. Their uncle Virender had picked them up from school. The accident occurred with a bus which came from Panipat side. Three claim petitions were filed.

The present appeal pertains to the death of Virender who was stated to be a Commission Agent. The claimants had pleaded that he had income of Rs.20,000/- per month. Some J forms were produced on record and were exhibited. The Tribunal rejected those documents which were photocopies and had not been proved and took the income of the deceased to be Rs.6,000/- per month and making a deduction of 1/4th the annual dependency was calculated as Rs.54,000/- and multiplier of 14 was applied. Expenditure of Rs.1,56,735/- was shown as the amount spent on the treatment. The Tribunal had allowed the following compensation:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Loss of Dependency	Rs.7,56,000/-
2.	Medical expenses	Rs.1,56,735/-
3.	Loss of love/affection	Rs.10,000/-
4.	Loss of estate	Rs.10,000/-
5.	Loss consortium (widow)	Rs.5,000/-
6.	Transportation	Rs.10,000/-
7.	Funeral and last rites	Rs. 10,000/-
	TOTAL	**Rs.9,57,735/-**

Counsel for the insurance company urges that the deceased was negligent and there were three children sitting on the motorcycle and it was a case of contributory negligence and the motorcyclist was at fault and he was guilty of contributory negligence to the extent of 50% and the amount be accordingly reduced. The counsel further submits that the deceased was driving with 3 children who were in the age group of 12 and they would occupy the pillion seat and there was a violation of Section 128 of the Motor Vehicle Act and there was every possibility that he had lost control. Reliance was placed upon ***Angrejo Devi and others Vs. Jai Parkash and others 2013(2) RCR (Civil) 161 and Managing Director, Tamil Nadu State Trans. Corpn. Ltd. Vs. Abdul Salam and ors. 2004 ACJ 1827***.

The submission on the other hand is that it was not a case of contributory negligence as the bus which was coming from Panipat side had hit the motorcycle from behind and it was on the left side of the road and a wrong plea had been taken by the driver that the motorcyclist was wanting to use the cut in the road to turn right and the site plan available on the record would also show the location where the accident had occurred. The counsel submits that the Tribunal had taken the lower income to calculate the loss and they had produced J forms to show that he was selling goods to the Commission Agent and the income of a labourer could not be taken for assessment. Counsel had referred to Ex. P-50 to P-62. The counsel also submits that the Tribunal had allowed only Rs.5,000/- for loss of consortium and very less amount had been allowed for loss of love and affection and they were entitled to increase on all the heads.

The insurance company has taken a plea that it was a case of contributory negligence but I find that no issue had been framed nor any evidence had been led. From the perusal of the statements on record it is clear that the motorcycle with the three children was going on the left side of the road. The bus driver tried to overtake another vehicle in front from its left and went to the extreme left side and struck against the motorcycle going in front and that is how the occupants of the motorcycle suffered injuries. The police had challaned the bus driver. There was no evidence that the motorcyclist all of a sudden turned the motorcycle on the road to use the cut between the roads. The site plan available on record does not show any cut on that road and false plea had been taken by the owner-driver. It was not a case of contributory negligence, though it is a case of violation of Section 128 of the Motor Vehicle Act. The deceased was driving with three children on the pillion who were in the age group of 12. The motorcycle is designed to ride two persons but that by itself would not be a ground to hold the driver guilty of contributory negligence.

Much stress had been led by the counsel appearing for the cross-objectors with respect to the income but I find that there is no convincing evidence to show the income. The claimants had introduced some receipts to show that some crop had been sold to the Commission Agent. The receipts only give the name and not the father's name, therefore, it could not be established that it related to the deceased. The claimants could have easily produced the Jamabandi to show that he owned land or had taken any land on lease. If there was no written document, the owner could have been examined to lend support.

The claimants had examined Suresh Kumar who had stated that the deceased used to sell produce at his shop and J forms were issued for the sale but this has to be rejected as the name of the father and other details are not mentioned therein. It could not be proved by the claimants that it was the deceased who was selling the produce. The witness did not even know whether Virender had any agricultural holding in the village. The witness had stated that after his death, nobody had come to his shop to sell crop. An explanation was required from the claimants as to what happened to the land.

There is no evidence with respect to educational qualifications of the deceased. The minimum wages in the year 2009 were Rs.3,840/- per month. The Tribunal had considered the income to be Rs.6,000/- per month which is adequate and I do not propose to make any change and considering the family members the deduction of $1/4^{th}$ was made. The deceased had left behind a minor daughter and his widow. Two other claimants were his parents but I do not propose to make any change in the multiplier. However, the award needs to be modified as the amount allowed on the miscellaneous heads is less, therefore, I would allow Rs.95,000/- for loss of consortium, Rs.90,000/- for loss of estate, Rs.90,000/- for loss of love and affection for the children and Rs.10,000/- more for transportation. The total addition comes to Rs.2,85,000/-. The cross-objectors/claimants would be entitled to an additional amount of Rs.2,85,000/-, which would be payable with interest @ 6% from the date of filing of the cross-objections till realization.

The appeal filed by the insurance company fails. The award is modified to the extent noted above. The cross-objections filed by the claimants are partly allowed.

July 25, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No