Sr.No.104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5573 of 2012(O&M)
Decided on: 24.11.2017

Reliance General Insurance Company Ltd.
..........Appellant

versus

Suresh Devi and others
..........Respondents

Coram: **HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Arun Sharma, Advocate for
Mr. T.K.Joshi, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

CM No. 25566-CII of 2012

This is an application for condonation of delay of 10 days in filing the appeal.

For the reasons mentioned in the application, the delay of 10 days in filing the appeal is condoned.

Civil Misc. application stands allowed.

FAO No. 5573 of 2012(O&M)

The present appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claim Tribunal, Jhajjar (hereinafter referred as 'the Tribunal') in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred as 'the Act') whereby an amount of ₹ 4,39,836/-was awarded to the claimant in a death case.

For convenience, the parties herein would be referred to as the petitioner and the respondents; as they were described in the original claim petition.

The brief facts of the case are that on 19.07.2009 Aman came to the house of his sister from village Ballaut. On that day, at about 1.45 pm he started his journey in a Alto Car bearing Registration No. HR-14D-4288 alongwith one Sandeep. When they reached near the village Kansala then some antelopes(Neel Gaai) came on the road. The driver tried his best to save the accident but the car slipped and struck with a Kikkar tree and Aman sustained multiple injuries; including the head injury; and he died on the spot. The accident was witnessed by Sandeep who accompanied him. In this regard, DDR was also registered by the police. On account of this accident, the claim petition was filed by mother of the deceased. It was claimed in the petition that the deceased was earning ₹3200/- per month from the agricultural work and milk diary. It was further claimed that ₹20,000/- was spent on the cremation and last rites of the deceased.

Respondents No. 1 and 2 filed their written statement. Respondent No. 2 who was the registered owner of the car in question and who was holding the insurance policy of the same; pleaded that the car had been sold to respondent No. 1. However, it was claimed that in any case respondents No. 1 and 2 were not liable to pay the compensation. Rather it was respondent No. 3; the insurance company; who was required to pay the compensation.

Respondent No. 3 insurance company filed a separate written statement denying the accident altogether. It was claimed by the insurance company that the vehicle has been falsely implicated to grab the third party claim. It was further claimed that the driver was not having a valid and effective driving license at the time of accident.

Parties led their respective evidence.

After appreciating the evidence led by the parties, the Tribunal held the claimant to be entitled to compensation. The age of the deceased was taken to be 22 years. The income of the deceased was taken at ₹ 3200/- per month as per the deposition of the claimant. Keeping in view the age of the deceased the Multiplier of 17 was applied. On the income taken by the Tribunal 1/3rd deduction towards personal expenses was applied by the Tribunal. Accordingly the final figure of the compensation was arrived at ₹4,39,836/-.

Challenging the award, the insurance company has filed the appeal, mainly, on the ground that the multiplier of 17 has been wrongly applied. Still further it is claimed that since the deceased was unmarried, therefore, deduction of 50% should be applied instead of 1/3rd, as has been done by the Tribunal. Accordingly, learned counsel for the Insurance Company has raised his argument.

However, having heard the learned counsel for the appellant and perusing the record with his able assistance, this Court is of the considered opinion that the deduction of 1/3rd has rightly been applied by the Tribunal. Since the claim petition in the present case was under Section 163-A of the Act, therefore, as per the schedule, deduction of only 1/3rd was to be made on account of personal expenses of the deceased. Accordingly, the Tribunal has rightly applied the deduction of 1/3rd. Still further the multiplier of 17 has also been applied as per the schedule meant for the petition filed under Section 163-A of the Act. Otherwise also, in the latest judgment of the Hon'ble Supreme Court rendered in the case of *National*

Insurance Company Limited vs. Pranay Sethi and others 2017 ACJ 2000 it has been held that the multiplier is required to be applied as per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma vs. Delhi Transport Corporation and another, 2009 ACJ-1298;*** As per the judgment of the Hon'ble Supreme Court in Sarla Verma's case (supra) the multiplier for the age of 22 years has to be 18, whereas, the Tribunal has applied the Multiplier of only 17 as per the schedule. There is no perversity in the approach of the Tribunal in this regard.

No other argument was raised by the learned counsel for the appellant.

In view of the above, the award and the finding recorded by the Tribunal in this regard are upheld. The present appeal is dismissed being devoid of any merits.

24th November, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*