IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

X Obj. No.48-CII of 2013 and
FAO No.239 of 2013
Date of Decision.23.10.2017

ICICI Lombard General Insurance Company Ltd. ....Appellant

Vs

Krishan and others ....Respondents

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

Mr. Ashwani Gaur, Advocate
for the respondents No.1 to 3-cross objectors.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.11828-CII of 2013 in X Obj No.48-CII of 2013

For the reasons stated in the application, delay of 28 days in filing the cross objections is condoned.

The application is allowed.

Main case

This order of mine shall dispose of appeal bearing No.239 of 2013 filed on behalf of the insurance company challenging the award of the Motor Accident Claims Tribunal on two counts namely (i) income of the deceased should have been taken on the basis of Minimum Wages instead of ₹6000/- per month and (ii) deduction should have been one half instead of 1/3rd and Cross Objection No.48-CII of 2013 filed on behalf of the claimants seeking enhancement of the compensation under the heads of loss of love and affection, funeral expenses and wrong application of multiplier on the basis of age of the parents whereas it should have been on the basis of the age of the deceased, who was unmarried at the time of the accident.

Mr. Goyal, learned counsel appearing on behalf of the insurance company submits that the deceased namely Anil died in a motor accident occurred on 29.09.2010. When he was coming from Ganaur on motor cycle bearing registration No.DL-4SAW-9472, the offending bus bearing registration No.DL-1PB-9864 driven rashly and negligently by respondent No.1 dashed against the motor cycle of the deceased from behind. As a result of the impact, the deceased sustained multiple injuries which ultimately proved fatal. In this regard, an FIR bearing No.245 dated 30.09.2010 under Sections 279, 337, 304A IPC was lodged at Police Station Murthal.

The claimants had only examined PW3, Amardeep, the alleged employer, who was running a firm under the name and style of M/s Antil Building Material Supplier, Bahalgarh Road, Sonipat. He stated that the deceased was doing the job as a Driver in his Firm and drawing a salary of ₹6000/- per month but did not produce on record any document to establish that the deceased was actually working as Driver and drawing a salary of ₹6000/- per month. Therefore, as per the minimum wages applicable at the time of the accident, a person was entitled to a sum of ₹4348/- per month and the same had to be taken as the income of the deceased. Moreover, deduction should have been one half instead of 1/3rd as the deceased was a bachelor at the time of accident.

He further submits that contention of the claimants in the cross objection with regard to multiplier to be adopted on the basis of the age of the deceased cannot be accepted as in cases of death of a bachelor, the multiplier is adopted on the basis of age of the parents and rightly so, the Tribunal adopted a multiplier of 11. To support his contention, he relies upon the judgment of a Coordinate Bench of this Court rendered in FAO No.2455 of 2015 decided on 2.2.2017 titled as "***Usha and another Vs. Krishan and others".*** Even the future prospects cannot be granted as sought in the cross objection, particularly in a case where the deceased was doing private job, thus, urges this Court for modification of the award by dismissing the cross objections.

Mr. Gaur, learned counsel appearing on behalf of the respondents-cross objectors has drawn attention of the cross-examination of PW3 to contend that once the employer has been categoric and coherent in the examination-in-chief, much less, cross-examination, the income of ₹6000/- has rightly been taken into consideration and cannot be thus decreased. The multiplier of 11 by taking the age of the parents cannot be taken into consideration in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. and others 2012 (11) SCC 738***. No doubt the employer had not brought on record any document to establish the income of the deceased but in the peculiar facts and circumstances of the case, the amount of ₹6000/- is liable to be sustained. No compensation under the heads of loss of love and affection had been awarded, though only a paltry sum of ₹10,000/- has been given for funeral expenses, which is liable to enhanced, thus, urges this Court for enhancing the award of compensation.

I have heard learned counsel for the parties and appraised the paper book. No doubt this Court in ***Usha and another's case*** (supra) has taken into consideration all the case law, much less, the judgment in ***Amrit***

Bhanu Shali's case (supra) and applied the multiplier by taking the age of the parents of the deceased. In my view the choice of multiplier on the basis of the age of the parents of the deceased is not a correct law as the Hon'ble Supreme Court in ***Amrit Bhanu Shali's case*** (supra) in paragraph 17 has categorically held that the selection of the multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation.

The life expectancy over a period of time has increased *viz-a-viz* the new generation. Therefore, the old concept of taking into consideration the age of the parents as the determining factor for choice of multiplier cannot be taken as a yardstick. Since the deceased was 25 years of age, the suitable multiplier would be 18.

However, *viz-a-viz* the income of the deceased except the bald testimony of the employer, no other evidence/material has been brought on record to establish the salary of the deceased as ₹6000/- per month. The factum of minimum wages to the tune of ₹4348/- at the relevant time had not been controverted/denied. In my view, the Tribunal should have taken the income of the deceased as ₹4348/- per month and deducted one half of the same towards personal expenses instead of 1/3rd. Therefore, I will take the income of the deceased as ₹4348/- per month, deduct one half of the same towards personal expenses and adopt a multiplier of 18 to assess the loss of dependency as ₹4,69,584. I will also add to it ₹50,000/- each to the parents towards loss of love and affection, ₹10,000/- towards loss of estate and ₹25,000/- towards funeral expenses.

In all, the compensation payable shall be ₹6,04,584/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till its realization. The enhanced amount shall be distributed between the parents and brother of the deceased in the ratio of 2:2:1. The liability shall remain the same as has already been assessed by the Tribunal.

The award passed by the Tribunal is modified to the above extent. The appeal and the cross objection are partly allowed.

(AMIT RAWAL)
JUDGE

October 23, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes