IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2799 of 2013 (O&M)

Date of Decision: 12.10.2017

ICICI Lombard General Insurance Co. Ltd.

..Appellant

Vs.

Saraswati Devi and others

..Respondents

A N D

Cross Objection No.82-CII of 2014

ICICI Lombard General Insurance Company Limited

..Appellant

Vs.

Sarswati Devi and others

..Respondents

CORAM: HON'BLE MR.JUSTICE B.S.WALIA

Present: Mr.Rajbir Singh, Advocate for the appellant.

Mr.S.K.Yadav, Advocate for cross objector-respondents No.1 and 2.

None for respondent No.3.

Respondent No.4 already ex parte.

B.S.WALIA, J.(Oral)

1. This order shall dispose of FAO No.2799 of 2013 filed by ICICI Lombard General Insurance Company as also Cross Objections 82-CII of 2014 filed by the claimants.

2. Brief facts of the case are that Laxmi Narain died in an accident on 26.10.2011. Laxmi Narain was 70 years of age as on date of death was

survived by his widow and a son aged 44 years. The learned MACT took the income of the deceased at Rs.15,015/- i.e. Rs.12,015/- on account of pension and Rs.3,000/- p.m. on account of working as an ordinary labourer or by doing agricultural work on his land thereby saving Rs.3000/- p.m. of his family. On the above mentioned basis, the Tribunal by taking into account, two dependents of the deceased i.e. widow and son awarded total compensation of Rs.6 lacs and a sum of Rs.28,000/- under conventional heads. In all, total compensation of Rs.6,28,000/- was awarded by making deduction of 1/3rd on account of personal expenses incurred by the deceased and by applying multiplier of 5.

3. Learned counsel for the Insurance Company contends that taking into account sum of Rs.3000/- p.m. on account of agricultural work done by deceased for computing the compensation payable was without any basis as apart from the statement of the widow of the deceased, there was nothing on the record to prove income of Rs.3000/- p.m. to the deceased from labour work. Learned counsel further contends that the son of the deceased i.e. respondent No.2, namely, Satish Kumar was 44 years of age as on the date of death of deceased, was married and was working as a Conductor in Haryana Roadways, besides has a son, then studying in 12th class. It is contended that Respondent No.2 was not dependent on the deceased, therefore, could not be included amongst the persons to whom compensation was payable, therefore respondent No.2 has to be excluded from the list of the persons to be awarded compensation, accordingly dependency instead of working out to 1/3rd would work out to 50%. Accordingly, it is the widow of the deceased alone, who would be entitled

to compensation by treating dependency as 50%.

4. Learned counsel for the claimant-Objector on the other hand, has not been able to point out any evidence from the record to prove that the deceased was earning Rs.3,000/- p.m. by doing labour work. Learned counsel has, however placed emphasis on the statement of widow of the deceased to the effect that her husband was earning a sum of Rs.3000/- p.m. by doing labour work. However, age of the son i.e. 44 years as on the date of death of deceased as also of his working as conductor in Haryana Roadways besides having a son studying in 12th class has not been disputed. The respondent-claimant Objectors have filed cross objections claiming enhancement of compensation awarded on the ground that the deceased was earning much more than Rs.3000/- p.m. by doing labour work and further that the compensation awarded on account of loss of consortium at Rs.10,000/-, loss of estate @ Rs.3000/-, Rs.10,000/- towards loss of love and affection and Rs.5000/- for funeral expenses was wholly inadequate and contrary to the conventional rate for award of compensation on the aforementioned account. Learned counsel for the claimant-Objector contends that as per well settled law, funeral expenses were to be awarded @ Rs.25,000/-, consortium @ Rs.1 lac to the widow, Rs.25,000/- on account of loss of estate and a sum of Rs.25,000/- each to the respondent-Objectors on account of loss of love and affection.

5. I have considered the submissions made by learned counsel for the parties and am of the considered view that the claim of the Insurance Company to the extent of award by taking into account a sum of Rs.3000/- p.m. being earned by the deceased by doing labour work as also award of

compensation to the son by treating him as dependent needs to be modified since admittedly, there is no evidence except for the self serving statement of respondent No.1 i.e. widow of the deceased of her husband earning a sum of Rs.3000/- per month on account of doing agricultural work. No independent witness to that effect has been examined. Besides, the deceased was 70 years of age as on the date of death. Accordingly, the plea of the Insurance Company that the earning of Rs.3000/- p.m. on account of agricultural work being done by the deceased is liable to be excluded is accepted. Resultantly, aforesaid amount has to be excluded while computing the compensation payable.

6. As regards son of the deceased i.e. respondent No. 2, for obvious reasons he was not dependent on the deceased as he was self sufficient being employed and is having a family of his own. Consequentially, the plea of the Insurance Company for modification of the award of compensation by exclusion of the son from the list of dependents is accepted. Accordingly, only the widow would be entitled to award of compensation. Resultantly, instead of taking 1/3rd dependency, 50% dependency is taken into account in awarding compensation to the widow. Accordingly, the appeal is accepted and the award passed by the learned Motor Accidents Claims Tribunal is modified to the extent as noted above.

Coming next to the Cross objections filed by the respondent, it is found that only a sum of Rs.5,000/- has been paid towards funeral expenses, a sum of Rs.10,000/- towards loss of consortium, Rs.3000/- towards loss of estate and Rs.10,000/- towards loss of love and affection. However, as per the amount being normally awarded on the aforementioned conventional heads, the respondent-widow would be entitled to a sum of Rs.25,000/- towards funeral expenses i.e. Rs.20,000/- over and above amount already awarded besides a sum of Rs.One lac for loss of consortium and loss of estate i.e. Rs.87,000/- over and above the sum of Rs.10,000/- earlier granted towards loss of consortium and Rs.3000/- towards loss of estate since as per paragraph No.30 of the decision in **Vimal Kanwar and others vs Kishore Dan and others-2013(2) RCR(Civil) 945** consolidated amount is payable on account of loss of consortium and loss of estate. Paragraph No.30 of the decision of the Hon'ble Supreme Court in **Vimal Kanwar's case (supra)** is reproduced hereunder:-

> ***"30. Having regard to the facts and evidence on record, we estimate the monthly income of the deceased Sajjan Singh at ₹ 9,000 x 2= ₹ 18,000/- per month. From this his personal living expenses, which should be 1/3rd there being three dependents has to be deducted. Thereby, the 'actual salary' will come to ₹ 18,000-₹ 6000/- = ₹ 12,000/- x 12= ₹1,44,000/- per annum. As the deceased was 28 ½ years old at the time of death the multiplier of 17 is applied, which is appropriate to the age of the deceased. The normal compensation would then work out to be ₹ 1,44,000/-x17 = ₹ 24,48,000/- to which we add the usual award for loss of consortium and loss of the estate by providing a conventional sum of ₹ 1,00,000/-; loss of love and affection for the daughter ₹ 2,00,000/-, loss of love and affection for the widow and the mother at ₹ 1,00,000/- each i.e. ₹ 2,00,000/- and funeral expenses of ₹ 25,000/-".***

A sum of Rs.50,000/- is awarded to the son i.e. Satish Kumar on account of loss of love and affection of his deceased father. However, no amount is being awarded on account of loss and of love and affection to the widow since she is being awarded a sum of Rs.One lac towards loss of consortium and the claim for love and affection would fall under the heading of loss of consortium. After deducting 50% towards personal expenses, the dependancy comes out to Rs.6007/-. Accordingly, respondent No.1 would be entitled to (Rs.6007x12x5)=Rs.3,60,420/- + Rs.1 lac on account of loss of consortium and loss of estate as against sum of Rs.10,000/- awarded earlier towards loss of consortium and Rs.3000/- towards loss of estate, Rs.25,000/- towards funeral expenses as against sum of Rs.5000/- awarded earlier along with interest @ 7.5% p.a. w.e.f. the date of claim petition till the same is paid, total Rs.4,85,420/- alongwith interest @ 7.5% p.a. w.e.f. date of entitlement till date of payment minus the amount if any, already paid. Respondent No.2 would be entitled to a sum of Rs.50,000/- on account of loss of love and affection alongwith interest @ 7.5% p.a. from the date of claim petition till date of payment. Cross Objections are accepted as per details given above.

Award is modified accordingly. Resultantly, instead of compensation of Rs.6,28,000/- a sum of Rs.5,35,420/- less amount if any paid earlier would now be payable along with interest @ 7.5% p.a. w.e.f. the date of the claim petition till date of payment.

(B.S.Walia)
Judge

12.10.2017
Meenu

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No