IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

FAO No.5100 of 2013
Date of Decision: 09.01.2017

Oriental Insurance Company Limited ....Appellant

Versus

Subhash Chander Palta and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Navin Kapur, Advocate
for the appellant.

Mr. Ravi Gakhar, Advocate
for Mr. Jagdish Manchanda, Advocate
for respondents No.1 and 2.

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DAYA CHAUDHARY, J.

The present appeal has been filed by the Insurance Company to challenge the impugned award dated 12.07.2013 passed by the Motor Accident Claims Tribunal, Chandigarh (here-in-after referred to as `The Tribunal').

Briefly, the facts of the case, as made out in the present petition, are that claimants Subhash Chander Palta and Anubhav Palta filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 after the death of Sampta Palta, the wife of claimant-Subhash Chander Palta, who met with an accident on 19.10.2010 while driving Honda Activa scooter bearing registration No.CH-03R-6925 and was going to her house in Sector 27, Chandigarh from market of NAC, Manimajra, Chandigarh. At about 3.15 p.m., respondent No.3-Anil Parshad was coming from Kalka side while driving his truck rashly and negligently at a high speed and struck with the scooter of the deceased, due to which, she fell down on the road and received injuries on her head and other parts of the body. Thereafter, she was taken to General Hospital, Sector 16, Chandigarh, where she was declared dead. Claimants are husband and son of deceased Sampta Palta who was 56 years of age at the time of her accident/death and she was working as teacher in Kendriya Vidalaya, Sector 31, Chandigarh.

Written reply of the claim petition was filed by respondents No.2 and 3 by raising certain objections such as that the driver of the truck was not rash and negligent rather injuries were received by the deceased due to her own rash and negligent driving.

The following issues were framed by the Tribunal ;

1. Whether deceased Sampta Palta died as a result of injuries suffered in a motor vehicular accident which was caused due to rash and negligent driving of vehicle no.HR-68-A-0357 which was being driven by respondent No.1 ? OPP
2. Whether claimants are legal heirs, dependent upon the income of the deceased? OPP
3. Whether the claimants are entitled to compensation on account of death of deceased Sampta Palta in a motor vehicular accident? OPP
4. Whether the respondent No.1 was not having valid driving licence at the time of accident? OPR-3
5. Whether the offending vehicle was having valid fitness certificate and route permit? OPR-3
6. Relief.

The claim petition filed by the claimants was allowed vide order dated 12.07.2013 and an amount of ₹ 28,18,826/- was awarded, which was to be paid to both the claimants in equal share. The claimants were also held entitled to get interest @ 7.5% per annum on the amount of award from the date of filing the petition till realization of the entire amount of the award. The respondents were also held entitled to pay the said amount jointly and severally.

The award passed by the Tribunal has been challenged by the Oriental Insurance Company Limited by raising various grounds.

Learned counsel for the appellant-Insurance Company submits that the quantum of compensation has been assessed by the learned Tribunal on the basis of gross salary including the amount of arrears, whereas, the deceased was getting salary of ₹ 36,544/-. The total salary has been assessed @ ₹ 38,912/- in stead of ₹ 36,544/- p.m. Learned counsel also submits that the multiplier of 9 has also wrongly been applied, whereas, the deceased was 56 years of age and she was to retire at the age of 60 years. The deceased was to get pension and half of the multiplier should have been used after the age of retirement. Learned counsel also submits that in the judgment passed in ***FAO No.331 of 1986*** titled as ***Chander Kanta vs State of Haryana***, decided on ***31.12.2000***, the age of superannuation was 58 years and a multiplier of 2 was applied. Learned counsel has also relied upon the judgments of Hon'ble the Apex Court in cases ***NICL vs Santosh Khandelwal and others*** in ***SLP (Civil) No.19803 of 2012*** decided on ***07.05.2013*** as well as ***United India Insurance Company Limited vs Shila Dutta (Civil Appeal Nos.6026-6027 of 2007)***, wherein, the appellant was held entitled to contest the case on all the ground available to the respondents, in addition to the grounds already available.

Learned counsel for the claimant respondents submits that the award of the Tribunal is well reasoned and the amount of compensation paid to the claimants cannot be said to be on the excessive side. The deceased was working as teacher and was 56 years of age. The service record of salary was brought by PW-3 Raj Kumar, which shows that the gross salary of the deceased for the month of September, 2010 was ₹ 36,544/-. The total salary i.e ₹ 38,912/- including arrears of dearness allowance was taken into consideration. The same was also mentioned in the salary certificate Exhibit P2 and salary register as Exhibit PW3/2. The multiplier of 9 was rightly applied.

Cross-Objections have also been filed by the claimants under Order 41 Rule 22 read with Section 173 of the Motor Vehicles Act for enhancement of compensation awarded by the Tribunal. He also submits that the amount of compensation is on the lower side as the learned Tribunal has not taken into consideration the house rent allowance which was to be added towards the gross salary of the deceased. It has been held by Hon'ble the Apex Court in ***Raghbir Singh Matolya and others vs Hari Singh Malviya and others 2009(3) RCR (Civil) 795*** that house rent comes under the definition of income of the deceased and dearness allowances and house rent allowances are to be included in computing net income of the deceased.

Learned counsel for the claimants submits that amount of ₹ 25,000/- has been awarded as funeral expenses, whereas, the amount of Rs.one lac was spent by the claimants. The deceased was to retire at the age of 60 years and she was to serve for four years more. The future prospects of the deceased have not been taken into consideration and as such, the amount of compensation paid to the claimants is on the lower side. At the end, learned counsel for the claimants/objectors submits that the interest granted by the Tribunal is also on the lower side.

Heard the arguments of learned counsel for the appellant-

Insurance Company as well as learned counsel for the claimants.

The accidental death of deceased Sampta Palta on 19.10.2010 is not disputed. It is also not disputed that the deceased was 56 years of age at the time of her death and she was working in Kendriya Vidalaya, Sector 31, Chandigarh and was getting salary of ₹ 36,544/- p.m. The only grouse, which has been raised in the present appeal by learned counsel for the Insurance Company, is that the gross salary for the month of September, 2010 was taken into consideration in awarding compensation as the amount of arrears of dearness allowance was also included during that period. The deceased was to serve for a period of four years more as she was 56 years of age and multiplier of 9 has been applied. This fact has also not been disputed by learned counsel for the claimants that the salary of the deceased was ₹ 36,544/- p.m but an argument has been raised that the amount of dearness allowance is also to be included in the salary. It has not been disputed by learned counsel for the claimants that the age of retirement was 60 years and at the time of death, the deceased was 56 years of age.

In the judgment of Hon'ble the Apex Court in case ***Smt. Sarla Verma and others vs Delhi Transport Corporation and another 2009(3) RCR (Civil) 77***, a uniform and consistent criteria was framed to determine compensation in case of death by following various steps :-

Step 1 – Ascertaining the multiplicand

Step 2 – Ascertaining the multiplier

Step 3 – Actual calculation

For the age group between 56 to 60 years, the multiplier of 9 has to be applied.

The only dispute is that the amount has been assessed on the basis of gross salary including arrears which was paid during that month only. The salary of the deceased was ₹ 36,544/- p.m., whereas, the salary of ₹ 38,912/- p.m has been taken into consideration which includes arrears of dearness allowance. It is also not disputed that the deceased was to be in service upto the age of 60 and at the time of death, she was 56 years, meaning thereby, she was to be in service for further four years. After the retirement, the deceased was to get pension, which is normally 50%. The multiplier of 9 was to be applied for a period of four years and thereafter, the multiplier of 7 should have been applied on half of the total salary.

In view of the facts as mentioned above, there is force in the arguments raised by learned counsel for the appellant and as such, the appeal is partly allowed and the award passed by the Tribunal is modified to the extent that the claimants shall be entitled for multiplier of 9 for a period of four years i.e up to the date of retirement and for the remaining period, the multiplier of 7 would be applicable. Accordingly, the learned Tribunal is directed to calculate the amount in accordance with said modification and after calculation, the same be paid to the claimants within a period of two months from the date of receipt of certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

09.01.2017
gurpreet

Whether speaking/reasoned Yes

Whether Reportable No