IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3197 of 2015 (O&M)
Date of decision: 17.04.2017

HDFC ERGO General Insurance Company Ltd. ..Appellant

Versus

Smt. Rajni and others ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Ms. Amandeep Kaur, Advocate for respondents No.1 to 4.

None for respondents No.5 and 6.

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Daya Chaudhary, J.

The appellant-Insurance Company has filed the present appeal to challenge impugned award dated 27.11.2014 passed by the Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter called as 'the Tribunal'), whereby, the claim petition filed by the claimants-respondents No.1 to 4 has been allowed and they have been granted compensation to the tune of ₹29,03,664/- along with interest @ 6% per annum from the date of filing of claim petition till its realization.

Briefly, the facts of the case as made out in the petition are that claimants-respondents No.1 to 4 filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Kulwinder Singh in a motor vehicular accident, stating therein that on 11.04.2013 at about 8.30 pm, deceased and his brother Bhupinder

Singh were going from Dera Bassi to village Janetpur on Chandigarh Ambala Road on separate motorcycles. On the way, offending SUV bearing registration No. PB-02-BN-0090 came from Ambala side at a high speed being driven in a rash and negligent manner struck into the motorcycle of the deceased and dragged him along with his motorcycle upto a distance of 50 meters. Resultantly, deceased-Kulwinder Singh sustained multiple serious injuries and was rushed to Civil Hospital, Dera Bassi, from where, he was referred to GMCH, Sector 32, Chandigarh. Thereafter, he was shifted to Alchemist Hospital, Panchkula. On 29.04.2013, he was brought back to GMCH, Sector 32, Chandigarh where he ultimately died on 06.05.2013.

The claim petition was contested by the owner, driver as well as insurance company by filing separate written statements. The Tribunal allowed the claim petition and awarded an amount of ₹29,03,664/- as compensation on account of death of Kulwinder Singh.

The income of deceased was assessed @ ₹10,000/- per month and by considering the fact that he was 32 years of age, multiplier of 16 was applied. The claimants-respondents No.1 to 4 were also held entitled for an amount of ₹5,18,664/- on account of expenditure on the treatment of the deceased and ₹25,000/- on account of funeral expenses. Widow of the deceased was held entitled to ₹1,00,000/- on account of loss of consortium and minor son was held entitled to ₹1,00,000/- on account of loss of love and affection. Out of total amount of compensation, 40% was to be disbursed to the widow as she had to bring up the minor son, 30% to the minor son, 20% to mother and 10% to the father.

Learned counsel for the appellant-Insurance Company submits that the issue regarding future prospects is pending before the Larger Bench of Hon'ble the Apex Court but the same has not been taken into consideration. The amount of compensation awarded to the claimants is also on the higher side. Learned counsel further submits that the claimants had failed to prove on record by adducing convincing evidence regarding the rash and negligent driving of the driver of the offending vehicle and the amount has been awarded only on the basis of presumption by holding that the deceased died due to rash and negligent driving of the driver of the offending vehicle. The income of the deceased has been assessed @ ₹10,000/- per month whereas there was no documentary proof regarding the same. Simple by relying upon the LIC premium receipts, the income has been assessed. Learned counsel also submits that in absence of documentary proof of income, at the most the monthly income of unskilled/skilled labourer could have been taken into consideration, which was in between ₹4500-6500 per month.

Learned counsel for respondents No.1 to 4 submits that the award passed by the Tribunal is well reasoned and the same has been passed after considering the age of the deceased and the multiplier which has been applied on the basis of judgment rendered by Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77*** by awarding amount against different heads.

Heard arguments of learned counsel for the parties and have also perused the impugned award as well as other documents available on the file.

The facts are not disputed. The award passed by the Tribunal is based on proper appreciation of evidence as the deceased was 32 years of age at the time of accident and it was proved on the basis of matriculation certificate wherein his date of birth was mentioned as 30.04.1981. As per claim petition, the deceased was working as photographer and was earning ₹15,000/- per month. It has also been mentioned in the award that the deceased had taken LIC policy, which was in the name of his son and he was paying the premium of ₹10,563/- per annum. An amount of ₹8.5 lakh was spent on treatment after the accident and an amount of ₹50,000/- was spent on funeral and last rites of the deceased.

PW3-Amit Sharma, medical record attendant, has proved Ex.P-67, the bill paid by the claimants on treatment of the deceased in Alchemist Hospital, Panchkula. Apart from said bill, other bills were also placed on record as Ex.P-38 to Ex.P-66 for an amount of ₹5,18,664/-. The income of the deceased was considered as ₹10,000/- per month and the claimants were awarded an amount of ₹5,18,664/- on account of expenditure incurred on his treatment, ₹25,000/- on account of funeral expenses, ₹1,00,000/- on account of loss of consortium to the widow and ₹1,00,000/- on account of loss of love and affection to the minor son.

Keeping in view the finding recorded by the Tribunal and on perusal of record available on the file, I am of the considered view that the amount of compensation awarded to the claimants is justified and no interference is required, except the issue of future prospects, which is pending before Hon'ble the Apex Court.

As such, out of total amount of compensation awarded by the Tribunal, 30% amount be not released to the claimants and the same be deposited in fixed deposit till the decision of matter relating to future prospects is pending before Hon'ble the Apex Court. However, 70% of the total awarded amount be released to the claimants within a period of one month from the date of receipt of certified copy of this order.

The Tribunal is directed to ensure the deposition of 30% of the total amount of compensation in fixed deposit in any nationalized bank. The claimants would be entitled to move application in case, the issue of future prospects is decided in their favour.

Accordingly, the appeal filed by the appellant-Insurance Company is partly allowed with the aforesaid modification of the award passed by the Tribunal.

17.04.2017 **(DAYA CHAUDHARY)**
neetu **JUDGE**

√
Whether speaking/reasoned Yes/No
√
Whether Reportable Yes/No