IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross-Objections No. 215-CII of 2016 in/and
F.A.O No. 2706 of 2016 (O&M)
Date of Decision:- 30.11.2017

Shriram General Insurance Co. Ltd. .... Appellant

Versus

Arshad & Ors. .... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Punit Jain, Advocate, for the appellant.

Mr. Sumit Gupta, Advocate,
for cross objectors-respondent Nos. 1 to 7

AVNEESH JHINGAN, J. (Oral)

Cross-objections filed in FAO No. 2706 of 2016 in which notice of motion had been issued are fixed today. Since the issues are inter-related with FAO No. 2706 of 2016, which already stands admitted, with the consent of both the parties, the same is also taken up on board for hearing.

The challenge in the FAO and the cross-objections is to the award dated 06.11.2015 passed by Motor Accident Claims Tribunal, Palwal (for short, 'the Tribunal).

Rashid, aged 39 years, lost his life in a motor vehicular accident on 04.07.2014. The accident involved car bearing registration No. HR-50-A-9123 and rashly and negligently driven Eicher Canter bearing registration No. UP-83-L-9743 (for short, 'the offending vehicle'). As a result of the accident, Rashid suffered grievous injuries and while going to the hospital he lost his life. FIR No. 141 dated 04.07.2014 was registered at Police Station Chhata.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The Tribunal after appreciating the facts and considering the material produced before it, awarded a sum of Rs.49,90,480/- along with interest @7.5% per annum.

I have heard learned counsel for the parties, perused the paper-book and record.

Learned counsel for the insurance company argued that the Tribunal has assessed the earning of the deceased on the basis of income tax return filed for the assessment year 2013-14 whereas average of last three returns should have been taken. He further argued that even in the return filed for the year 2013-14 the income has been taken as Rs.2,85,500/- which included interest of Rs.18,500/-. The same should not have been included. He further contended that $1/5^{th}$ deduction for self-expenses has been made by the Tribunal, whereas $1/4^{th}$ deduction should have been made because the claimants include one major son. His further grievance is that future prospects of 50% have been awarded which is on the higher side.

Learned counsel for the claimants defended the award and argued that the Tribunal had rightly assessed the income relying upon the income tax return for the assessment year 2013-14. He contended that there are seven claimants and hence deduction of $1/5^{th}$ has rightly been applied. He could not raise any serious objection that the future prospects of 50% are awarded on the higher side.

In cross-objections, learned counsel for the claimants has argued that an amount of Rs.10,000/- has been awarded for transportation and expenses for last rites. No amount has been awarded under other conventional heads.

Learned counsel for insurance company could not raise any serious objection regarding enhancement of compensation under other conventional heads.

The contention raised by learned counsel for the insurance company that the average of the three returns should have been taken by the Tribunal to assess the earning of the deceased is not sustainable. From the perusal of the return and the computation of income, it is clear that there was a gradual increase in each year. For assessment year 2011-12, the gross income was Rs.1,57,000/-; for assessment year 2012-13 the income was Rs.1,77,000/- and for the assessment year 2013-14 it was Rs.2,85,500/-. It would be pertinent to note here that the last return relied upon was filed almost 11 months prior to the death of Rashid. In such circumstances, no doubt can be raised about the gross income shown in the return. Issue of taking average of that return would arise if there was variation in the income but here the increase is gradual. No fault can be found in the award of the Tribunal in considering the last return for assessing the income. The Tribunal has assessed income according to the law by taking the gross income and thereafter deducting the income tax. Even otherwise income tax return is the safest yardstick to assess the earning of a person.

The contention of learned counsel that the interest income should be deducted from the business income for arriving at the annual earning of the deceased is also not sustainable. From the computation attached to the income tax returns it is evident that this is not interest income from bank deposits. The amount relates to the interest received from the parties. This establishes that the interest income was also a part and parcel of the business income. It is during the business transactions in which money payment are delayed that the interest is received. In such circumstances this income has to be added to the earning of the deceased.

The issue regarding deduction of self-expenses has been dealt with by Hon'ble Apex Court in case of ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***. In the said case, it has been held that where the dependents are 4 to 6, 1/4th deduction has to be made and where the dependents are more than six 1/5th deduction has to be made. A claim petition was filed by seven children six of them were minor. The eldest one Arshad was 21 years of age at that time. The reliance of insurance company on the cross-examination of Arshad that he was married and his marriage was held in 2010 will not be of any help. It has been stated in his cross-examination that he does occasional labour work as and when it is available. The said lines cannot be read in isolation. He further stated that the entire family was dependent on the income of the father. In such circumstances nothing has come on record to show that Arshad was not dependent on the deceased. In such circumstances 1/5th deduction has been rightly made.

The contention of the learned counsel for the insurance company that future prospects of 50% have been wrongly added deserves acceptance in view of the law laid down by the Hon'ble Apex Court in ***National Insurance Company Ltd. vs. Pranay Sethi and Ors. in SLP (Civil) No.25590 of 2014 decided on 31.10.2017.*** As per the decision of

Hon'ble Apex Court 40% of future prospects should have been added in the present case. The loss of dependency would be recalculated below after adding 40% future prospects.

No other issue has been raised on loss of dependency as the multiplier and the age of the deceased have not been disputed by either of the parties.

The contention raised by learned counsel for the claimant regarding conventional heads deserves acceptance in view of the law laid down by the Apex Court in ***National Insurance Co. Ltd.*** (Supra). Rs.15,000/- amount for funeral expenses should have been awarded and Rs.15,000/- should have been awarded for loss of estate.

In view of the above discussion, the loss of dependancy is re-calculated as under:-

Income assessed by the Tribunal	=	Rs.2,76,693/-
Add 40% future prospects	=	Rs.1,10,677/-
Total	=	Rs.3,87,370/-
Less Self-expenses deduction $1/5^{th}$	=	Rs.77,474/-
Total	=	Rs.3,09,896/-
applying multiplier of 15	=	Rs. 46,48,440/-
For funeral expenses	=	Rs.15,000/-
For loss of estate	=	Rs.15,000/-
Total	=	Rs.46,78,440/-

The award dated 06.11.2015 is modified to the extent that the amount awarded of Rs.49,90,480/- is reduced to Rs.46,78,440/-.

The claimants would be entitled to the balance amount along with interest as awarded by the Tribunal.

Net result is that appeal filed by the insurance company is partly allowed and the cross-objections are also partly allowed.

November 30, 2017 **(AVNEESH JHINGAN)**
tripti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No