IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.5903 of 2016 (O&M) with
XOBJC No.270-CII of 2016
Date of Decision: 11.01.2017

Universal Sompo General Insurance Company Ltd.

......Appellant

Vs

Neelam Maggo and others

.....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Pradeep Kumar, Advocate
for the appellant.

Mr. Mrigank Sharma, Advocate
for cross-objectors/respondent Nos.1 to 3.

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RAJ MOHAN SINGH, J.

CM No.20191-CII of 2016

For the reasons mentioned in the application, delay of 147 days in filing the appeal is condoned.

Application stands disposed of.

FAO No.5903 of 2016 (O&M) with
XOBJC No.270-CII of 2016

[1]. Appellant-Insurance Company has assailed award dated 11.01.2016 passed by Motor Accidents Claims Tribunal, Chanigarh (hereinafter to be referred as 'the Tribunal') vide

which claim petition filed by the claimants/respondent Nos.1 to 3 was allowed and the claimants were held entitled for compensation to the tune of Rs.32,38,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till final realization of the amount. Appellant-Insurance Company was held liable to make the payment in the manner as mentioned in the award.

[2]. Cross-objection on behalf of respondent Nos.1 to 3 against the award dated 11.01.2016 passed by the MACT, Chandigarh for the enhancement of the compensation as claimed in the claim petition has also been filed.

[3]. Brief facts are that the accident in question took place on 04.02.2015 at about 11.00 a.m., when the deceased Dalip Kumar Maggo was coming from Sector 19, Chandigarh and was going towards Sector 45, Chandigarh on his scooter make Kinetic Honda. When he reached near light point of Sector 44/45, Chandigarh, a car make Tata Indica Vista (hereinafter to be referred as 'the offending vehicle') came from behind in a rash and negligent manner. Respondent No.1 was driving the offending vehicle and the same hit the deceased. The deceased fell down on the road and suffered multiple injuries. He was removed to GMCH, Sector 32, Chandigarh, where he was

declared brought dead. FIR was registered by Aseem Bansal. It was alleged that the accident took place due to the rash and negligent driving of the offending vehicle by the driver.

[4]. Deceased was 56 years of age at the time of accident and was working in the office of Directorate of Census Operations, Haryana, Ministry of Home Affairs, Govt. of India, Sector 19-A, Chandigarh. The monthly salary of the deceased was Rs.41,676/-. Total compensation to the tune of Rs.50 lacs was claimed for untimely death of the deceased Dalip Kumar Maggo.

[5]. Claim petition was contested. Appellant-Insurance Company was proceeded against *ex parte*. Driver and owner of the offending vehicle contested the claim of the claimants. Driver of the offending vehicle took the stand that he was not the driver of the offending vehicle on 04.02.2015, nor the vehicle was involved in the accident. Owner of the offending vehicle also contested the claim petition and asserted that the vehicle was duly insured with the Insurance Company from 13.08.2014 to 12.08.2015 and the driver was holding a valid driving licence. Other pleadings of the claimants were also denied in respect of age of the deceased and his avocation and earning. Registration of criminal case was claimed to be result of

connivance. It was admitted that the Allahabad Bank was the owner of the vehicle, but the claimants were not entitled to any compensation from the owner of the vehicle.

[6]. The Tribunal on the basis of evidence led by the parties, decided issue No.1 in favour of the claimants, holding that the accident in question took place due to rash and negligent driving of the offending vehicle by its driver. Aseem Bansal PW-2 was the author of the FIR. He corroborated the facts and FIR Ex.PW1/C was registered against the driver of the offending vehicle. Evidently, the driver of the offending vehicle was facing criminal trial.

[7]. Learned counsel for the appellant argued that Aseem Bansal PW-2 was the projected witness being close relative of the deceased. He was son-in-law of the deceased and there was material discrepancy in his statement. In the FIR, PW-2 narrated the description of the driver as non-Sikh gentleman, whereas in the challan driver of the offending vehicle was found to be Sikh gentleman. Secondly, the witness chased the offending vehicle, he should have given registration number of the car. The conduct of the witness was not normal as he was expected to take the then injured to the Hospital, rather to follow the offending vehicle. The witness did not inform his mother-in-

law, rather she rang him up after admission of the deceased (then injured) in the Hospital.

[8]. Learned counsel submitted that it was a case that mother-in-law, who received the information first and then the witness went to the Hospital. PW-2 was not proved to be present on the spot. Further there were three claimants, out of them two were already married daughters, therefore, they were not entitled to claim any maintenance being not dependant upon the deceased in any manner. They were only entitled for loss of estate. Third claimant was dependant upon the deceased and, therefore, deduction in respect of personal expenses to the tune of half should have been applied by the Tribunal. Deceased was found to be above 56 years of age i.e. tentatively 58 years and even, if he was presumed to be in job, he would have retired at the age of 60. Therefore, the claimants were entitled for the loss of salary of two years and then pension was the natural consequence of services of the deceased.

[9]. It was further submitted by the learned counsel that the deceased was the employee of Haryana State Government. Family pension was given. Income tax was to be deducted which was not admittedly done.

[10]. Learned counsel for the appellant relied upon ***Reliance***

General Insurance Company Ltd., vs. Shashi Sharma & Ors., Civil Appeal No.9654 of 2016 decided on 23.09.2016 to contend that the amount towards family pension was to be deducted while computing the total compensation.

[11]. I have heard learned counsel for the parties.

[12]. Deceased was working as Statistical Investigator, Grade II and was getting monthly salary of Rs.41,676/-. PW-3 Navin Kumar, Office Superintendent, Office of Directorate of Census Operations, Haryana was examined, who has proved the salary certificate of the deceased as Ex.P-3/B. The salary of the deceased was proved to be Rs.41,676/-. Deceased was found to be 56 years of age at the time of accident being born on 28.04.1958. After deduction to the tune of Rs. 3526/- as HRA, Rs.800/- as Transport Allowance and Rs.309/- as Income Tax, monthly salary of the deceased was calculated to be Rs.37,000/- (in round figure) and annual income was assessed to be Rs.4,44,000/-. 1/3rd was deducted towards personal expenses and, therefore, annual dependency came out to be Rs.2,96,000/- per year. Multiplier of 9 was applied keeping in view the age of the deceased in view of the law laid down in ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Anr., 2009(3) RCR (Civil), 77***. Total amount

was assessed to be Rs,26,64,000/-. In view of age of the deceased, future prospects @ 25% were applied in view of law laid down in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***.

[13]. Claimant No.1 was entitled to Rs.50,000/- as consortium and claimant Nos.2 and 3 were entitled to Rs.50,000/- each as loss of love and affection. An amount of Rs.25,000/- was granted towards funeral expenses. In this way, total amount was calculated to be Rs.32,38,000/-. The amount of compensation was ordered to be paid along with interest @ 7.5% per annum from the date of filing of the claim petition, till final realization of the amount. Insurance Company was held liable to make payment of the compensation.

[14]. The present appeal has been filed only by the Insurance Company, which was proceeded against *ex parte* before the Tribunal. Owner of the offending vehicle i.e. Allahabad Bank filed written statement and submitted the address of the Insurance Company. Thereafter summons were issued to the Insurance Company, which did not appear despite service and was proceeded against *ex parte*. No application under Order 9 Rule 13 CPC was filed by the Insurance Company before the Tribunal.

[15]. Evidently, the Insurance Company had all the time to lead evidence before the Tribunal in order to substantiate its defence. Since the appellant preferred not to challenge the *ex parte* proceedings against it, therefore, for want of evidence appellant cannot challenge the salary component and dependency of the claimants on the income of the deceased. As per salary certificate, an amount of Rs.309/- was shown to be deducted towards income tax. Besides, Rs.15,000/- towards GPF contribution and Rs.60/- towards CGEGIS. The pay component was inclusive of basic pay, grade pay, HRA, transport allowance and dearness allowance. After deduction of Rs.15,369/-, net salary was Rs.26,307/-. Apparently, deduction towards income tax was made from monthly salary of the deceased. There was no rebuttal to this evidence led by the claimants. Allahabad Bank (owner) as well as Insurance Company were operating from the same premises and it was a joint venture. Since no evidence was led, therefore, argument on this point cannot be appreciated by the Court.

[16]. The decision rendered in ***Reliance General Insurance Co. Ltd.'s*** case (supra) is based on different parameters as the interpretation of Haryana Compassionate Assistance to the dependants of the Deceased Government Employees Rules

2006 were considered by the Hon'ble Apex Court. It was held that the financial benefits granted under the Scheme of Rules of 2006 are to be deducted while computing total compensation. Compensation is not a bonanza *largesse* on source of profit. Rules of 2006 were applicable in a case for granting compassionate assistance by way of *ex-gratia* financial assistance on compassionate grounds to the dependants of the Government employee, who dies in harness. The dependants can still be permitted to claim the amount of compensation under the Motor Vehicles Act. The Scheme of 2006 Rules is to provide financial assistance in the form of *ex-gratia* financial assistance on compassionate grounds equivalent to pay and other allowances that was last drawn by the deceased employee. In the normal course, without raising specific claim, claimants are legitimately entitled to claim for the loss of pay and wages of the deceased government employee against tort feasor or Insurance Company.

[17]. In the aforecited case, the amount awarded under Rules of 2006 was to be excluded as the claim Tribunal has to adjudicate the claim and determine the amount of compensation which appears to be just and proper. The amount receivable by the claimants towards pay and allowances in the form of *ex-*

gratia financial assistance cannot be paid second time to the claimants. Rules of 2006 would come into play in case, the Government employee dies in harness, even due to natural death. The amount has to be excluded while computing compensation, however other benefits extended to the dependants of the deceased Government employee in terms of Sub-Rule(2) of Sub-Rule(5) of Rule 5 including family pension, life insurance, provident fund etc., shall remain unfettered and cannot be allowed to be deducted. In view of ***Helen C. Rebello and thers vs. Maharashtra State Road Transport Corpn. and another, 1998 AIR (SC) 3191,*** the amount receivable from Insurance Company on account of death of the insured is not deductable from the amount of compensation awarded under Motor Vehicles Act.

[18]. Award of claim under Motor Vehicles Act, is based on welfare legislation and it is not necessary that in every case, FIR has to be registered. The proceedings under Section 166 of the Motor Vehicles Act are summary in nature and only preponderance of evidence is required while awarding compensation in favour of the claimants. Pendency of criminal case against the driver of the offending vehicle is sufficient to arrive at a conclusion that the driver of the offending vehicle was

rash and negligent in causing accident.

[19]. Since the Insurance Company has not led any evidence, therefore, the Insurance Company cannot be permitted to assail award on these factual niceties. In considered opinion of this Court, the Tribunal has not committed any error of jurisdiction while awarding the compensation. Appellant/Insurance Company cannot be permitted to assail the award on factual matrix particularly when it was *ex parte* before the Tribunal and no effort was made to seek setting aside the *ex parte* proceedings. For want of evidence, nothing could be proved by the Insurance Company on record to show that the award made by the Tribunal was factually wrong.

[20]. Since there was no evidence led by the appellant/ Insurance Company, the concept of loss of estate and award on account of loss of love and affection to the tune of Rs.1 lac each in favour of daughters cannot be ignored at this stage. Since the Tribunal has not made any such calculation on different heads of loss of estate, loss of consortium in the light of observations made by the Hon'ble Apex Court in ***Vimal Kanwar and others vs. Kishore Dan and others, 2013(2) RCR (Civil) 945.***

[21]. The appeal filed by the Insurance Company needs to be dismissed and cross-objections filed by the claimants for

enhancement of compensation needs to be partly accepted to the tune of awarding an amount of Rs.50,000/- towards additional consortium thereby making the tally to be of Rs.1,00,000/- in view of law laid down in ***Vimal Kanwar and others'*** case (supra). Under love and affection, the amount awarded appears to be justified.

[22]. With this partial modification, cross-objection is partly accepted to the tune of Rs.50,000/- and the appeal preferred by the appellant/Insurance Company stands dismissed.

January 11, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No