IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1146 of 2017 (O&M)
Date of Decision:04.12.2017

Cholamandalam MS General Insurance Co. Ltd.

...Appellant

Versus

Sarita and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Punit Jain, Advocate for the appellant.
Mr.Rahul Makkar, Advocate for respondent No.1.

ANIL KSHETARPAL, J. (ORAL)

Insurance company is in the appeal against the award passed by the learned Motor Accident Claims Tribunal dated 25.10.2016, awarding a sum of Rs.45,76,690/- on account of death of late Sh.Rishikesh.

Widow and minor child of Rishikesh filed a claim petition on 4.7.2016 under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.1 crore along with interest @18% per annum.

The learned Tribunal, after appreciating the evidence available on the file, allowed the petition and awarded compensation to the tune of Rs.45,76,690/-.

Learned counsel for the appellant has submitted that no eye witness has been examined and therefore, there is no evidence of rash and negligent driving.

No doubt, no eye witness has been examined but in the present case, it is undisputed that late Sh. Rishikesh was traveling in a Innova Car

(Make Toyota), being owned and driven by Devender-respondent No.1. The vehicle was involved in an accident. FIR has been registered. Challan has been presented against Devender. It is further not in dispute that Devender has got released the vehicle on supardari. In the facts of the case, when it is not disputed that late Sh.Rishikesh was travelling in the vehicle owned and driven by respondent No.1, it was the duty of respondent-Devender to explain as to how and in what manner the accident took place.

It is also not in dispute that driving licence of Devender, the owner and driver of the offending vehicle, was found at the spot of accident by the police. Devender, while appearing in the witness box, has deposed that no accident took place. That itself would not absolve Devender or the Insurance company. During cross examination, Devender has admitted that he used to ply his vehicle between Delhi-Gurgaon. He further admitted that FIR has been registered against him and challan has been presented. He also admitted that he has got released the vehicle on supardari.

Taking into consideration these facts, this Court is of the opinion that in such circumstances, it was not necessary for the claimants to produce an eye witness of the accident. It was the duty of respondent-Devender to explain as to how and in what manner accident took place. In these undisputed fact situation, this Court does not find that there is any error in the order of the learned Tribunal, while deciding Issue No.1.

Learned counsel for the Insurance Company has further submitted that the learned Tribunal applied a multiplier of 14, although as per the age of the deceased, the multiplier of 13 should have been applied.

The deceased was 46 years at the time of death. Deceased was a permanent employee posted in Ministry of Defence as a Class-IV. Taking into the consideration the fact that expectancy of life has been increased, the multiplier of 14 applied by the Tribunal is not on the higher side.

Learned counsel for the Insurance company/appellant has further submitted that deduction with respect to income tax has not been made.

As noticed earlier, late Shri Rishikesh was working as Sweeper, i.e. a Class-IV employee in the Ministry of Defence. In the normal circumstances, no income tax is payable by a Class-IV employee. Apart from the exempted amount, the employees are also entitled to standard deduction.

Learned counsel for the appellant has submitted that the learned Tribunal has awarded a sum of Rs.2.25 lacs under the Conventional Heads. While placing reliance on a latest judgment of the Constitution Bench of the Hon'ble Supreme Court in **SLP (C) No.25590 of 2014 (National Insurance Company Limited Vs Pranay Sethi and others)** decided on 31.10.2017, he has submitted that the claimants could at the most be awarded Rs.70,000/- under the Conventional Heads.

Learned counsel for the respondents could not dispute this position.

Taking into consideration the aforesaid facts, the award passed by the learned Tribunal is modified and the amount under the Conventional Heads shall stand reduced to Rs.70,000/-. Thus, there would be total deduction of Rs.1.55 lacs in the compensation awarded to the claimants by the learned Motor Accident Claims Tribunal. Hence amount of compensation payable to the claimants comes to Rs.44,21,690/-.

In view of the above, the appeal filed by the Insurance Company is partly allowed. Pending application, if any, shall also stand disposed of.

04.12.2017 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No