112.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-1308-2017 (O&M)
Date of decision:18.05.2017

SBI GENERAL INSURANCE COMPANY LTD ... Appellant

VS

KARTIK & ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

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

HARI PAL VERMA, J.

CM-4077-CII-2017

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 25 days in filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 25 days in filing the appeal is condoned.

CM-4076-CII-2017

Prayer in the application filed under Section 151 CPC is for condonation of delay of 3 days in re-filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 3 days in re-filing the appeal is condoned.

FAO-1308-2017

The appellant-Insurance Company has filed the present appeal against the award dated 08.09.2016 passed by Motor Accident

Claims Tribunal, Sonipat (for short, 'the Tribunal'), whereby the claim petition filed by the claimants (respondents No.1 and 2 herein), under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation on account of death of Ravina (mother of respondent-claimant No.1-Kartik and wife of respondent-claimant No.2-Vinod Kumar), was allowed and the claimants were held entitled to compensation of ₹20,11,000/- along with interest @ 9% per annum from the date of filing of petition till the date of realization.

Briefly stated and as per the claim petition, on 23.01.2015, Ravina (since deceased) was travelling in a car bearing registration No.HR-54C-0004 along with the claimants and one Monika (cousin of claimant No.2-Vinod Kumar). The said car was being driven by one Sandeep at a moderate speed while observing all traffic rules and they were returning from Panipat to Sonipat. At about 9.30 PM, when they were near Milan Dhaba in the area of Village Teha, Ravina (deceased) desired to answer the call of nature. The car was stopped at the berm of the road and Ravina, who was seated just behind the driver seat, alighted from the car, but she was hit by a truck bearing registration No.HR-63B-2324, being driven by Jaipal (respondent No.3 herein) in a rash and negligent manner. On account of injuries suffered by her in the accident, Ravina had passed away. As per the claimants, at the time of her death, she was 27 years of age and used to earn ₹15,000/- per month by doing tailoring work, besides rendering services to the family as a housewife. Because of the accident, the claimants suffered loss of life of their mother and wife respectively. Hence, the claim petition for compensation was filed.

Before the Tribunal, respondent No.3 i.e. the driver-cum-owner of the offending truck contested the claim petition and filed written statement denying the accident or that it had taken place due to his rash and negligent driving. Rather the accident took place due to sole negligence of the deceased herself, as, she alighted from the car after getting it stopped suddenly in the middle of the road, whereas, he was driving the truck at a moderate speed observing all the traffic rules. Therefore, the liability to pay compensation was denied.

The appellant-Insurance Company has also opposed the claim petition and submitted that no accident has taken place as alleged. Therefore, no liability to pay compensation can be fastened upon them.

In support of their case, the claimants have examined Vinod Kumar (husband of the deceased) as PW1, who stated in his cross-examination that since it was night hours of winter season, he could not notice the registration number of the offending vehicle and he got registered the FIR by disclosing that some unknown vehicle had caused the accident. The claimants have examined another witness i.e. Sohan Lal as PW3, who deposed that he had witnessed the accident which was caused by respondent No.3 while driving the offending truck in a rash and negligent manner. He further deposed that at the time of accident, he was going Delhi from Ganaur on his motorcycle and that he had chased the offending vehicle and noted down its registration number. He was also subjected to cross-examination, but despite lengthy and searching cross-examination, nothing concrete has been extracted from him which could have impeached the veracity of his testimony. PW2-Rajesh Kumar-an official of the court, proved on record the factum of trial being faced by respondent No.3 and also proved two statements of PW3-Sohan Lal recorded by the police under Sections 161 and 162 Cr.P.C. (Exs.P6 and P7).

On the other hand, the stand of the respondents is that the FIR (Ex.P1) was lodged against an unknown vehicle/driver and lateron, respondent No.3 was falsely implicated in a case so as to claim compensation.

It was only after registration of FIR when investigation was taken up with the concerned police authorities, the fact regarding registration number of the offending vehicle curled out from the statement of PW3-Sohan Lal that on the fateful day, it was respondent No.3, who was driving the offending vehicle in a rash and negligent manner, which resulted into death of Ravina.

The Tribunal held that the accident took place due to rash and negligent driving of offending vehicle by respondent No.3, causing the death of Ravina. As regards quantum of compensation, it was held that the deceased-Ravina was 28 years of age as per Ex.P3-State Level Training Certificate. Though the claimants claimed that the deceased was earning ₹15,000/- per month by doing tailoring work, but in the absence of any documentary or oral evidence, the Tribunal took her notional income as ₹9,000/- per month in view of law laid down by this Court in ***United India Insurance Company Limited Versus and Sube Singh and others-FAO-218-2014, decided on 15.01.2014***. Since the deceased was 28 years of age, multiplier of 17 was applied in view of judgment passed in ***Sarla Verma Versus Delhi Transport Corporation and another-2009(6) SCC 121***. No deductions were applied to her notional income in view of laid down in the judgments i.e. ***Royal Sundaram Alliance Insurance Company Limited Versus Manmeet Singh and others-2012 ACJ (Delhi) 721*** and ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others-2013(4) PLR 328 (P&H)*** wherein it has been held that the income of a housewife is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied to such assessment. Accordingly, loss of dependency was assessed as ₹18,36,000/- (i.e. ₹9,000 x 12 x 17). Apart from this, in view of judgment of Hon'ble Supreme Court rendered in ***Rajesh and others Versus Rajbir Singh and others-2013(9) SCC 54***, the claimants were also held entitled to loss of consortium, loss of love and affection, funeral & last rites etc. and accordingly, the Tribunal, vide award dated 08.09.2016, awarded a compensation of ₹20,11,000/-.

Aggrieved against the aforesaid award dated 08.09.2016, the appellant-Insurance Company has filed the present appeal.

Learned counsel for the appellant has argued that the Tribunal has failed to appreciate the fact that though the accident took place on 23.01.2015, but the number of the vehicle was disclosed on 13.03.2015 i.e. after 1 ½ months. Though the deceased was a housewife and was not earning anything and at that time, the minimum wages were ₹5,813/-, but the Tribunal took her income as ₹9,000/- per month and no deductions were made towards her personal expenses. The Tribunal granted compensation on higher side. Though the FIR was registered against an unknown vehicle, therefore, it is a case of 'hit and run'. The entire case revolves around the statement of PW3-Sohan Lal, whose statement is not trustworthy. No reasoning were given that why he (Sohan Lal) did not disclose the vehicle number to the police in time. It is an implanted case.

I have heard learned counsel for the appellant and perused the award.

For the accident in question, an FIR was registered and two statements of PW3-Sohan Lal were recorded by the police under Sections 161 and 162 Cr.P.C. i.e. Exs.P6 and P7. When PW3 was cross-examined, no ambiguity found in his statement. He stated that on the fateful day at about 9.30 PM, in the vicinity of village Teha opposite Milan Hotel, he was going to Delhi from Ganaur and he witnessed the accident. He chased the offending vehicle and noted down its registration number. He also deposed that at that time, he could not inform the police and his statement was recorded during the course of investigation. In this manner, this witness succeeded in proving the case that the accident took place due to rash and negligent driving of respondent No.3 and, therefore, his statement cannot be disbelieved. Moreover, respondent No.3 has stated that he has been falsely implicated in the case. If he had been falsely implicated in the case, he would have filed complaint to the higher police authority, but no such complaint is shown to have been filed.

The services rendered by a wife or mother can hardly be quantified in terms of money. The wife or mother never works according to the clock, rather they are always found busy in household affairs. The gratuitous services rendered by her with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others i.e. skilled or unskilled workers. A housekeeper or maidservant can do the household work such as cooking food, washing clothes and utensils, keeping house clean etc. but she can never be a substitute of a mother who renders selfless and consistent service to her family including the husband and the children. This issue has been considered by the Hon'ble Supreme Court in ***<u>Arun Kumar Agarwal Versus National Insurance Company and others-2010 ACJ 2161</u>*** wherein it was held that it is not possible to quantify any amount in lieu of the services rendered by a wife or mother to the family. Though in the present case, the notional income of the deceased was taken as ₹9,000/- in view of judgment rendered by this Court in ***<u>Sube's case</u>*** (supra), the plea of the appellant-Insurance Company that it was taken on higher side, cannot be accepted.

No body comes to road to get killed. So, the plea of the offending truck driver that the car in which deceased was seated, was stopped in the middle of the road, cannot be accepted. The award passed by the Tribunal in all other respects is upheld.

In view of above, this Court does not find any reason to interfere in the well reasoned award passed by the Tribunal. Accordingly, the appeal filed by the Insurance Company stands dismissed.

(HARI PAL VERMA)
JUDGE

18.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No