In the High Court of Punjab and Haryana at Chandigarh

FAO- 2596 of 2017(O&M)
Date of Decision: 28.8.2017

Reliance General Insurance Company Limited

---Appellant

versus

Subha Chand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Subhash Goyal, Advocate
for the appellant

***

Rekha Mittal, J.

Respondents have been served but remain unrepresented. As a consequence, they are proceeded against ex parte.

The present appeal has been directed against award dated 25.11.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short "the Tribunal") whereby compensation has been awarded in regard to death of Anil in a motor vehicular accident that took place on 25.5.2012.

Counsel for the appellant would inform that the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the Tribunal has assessed loss of dependency to the tune of Rs. 10,08,072/- (round off to Rs. 10,08,000/-) but has wrongly applied deduction for personal expenses to the extent of 1/3rd in place of 50% as the deceased was unmarried son of the claimants.

Another submission made by counsel is that driver of the offending vehicle did not possess a valid driving licence which was issued by the office of District Transport Officer, Zunheboto, Nagland. To bring home his contention, he has placed reliance upon information received under the Right to Information Act, 2005 and the documents R-5 to R-9 in this regard.

I have heard counsel for the appellant, perused the paper book particularly the award dated 25.11.2016.

The Tribunal has assessed income of the deceased at Rs. 7,000/- per month, applied a cut of $1/3^{rd}$ for personal expenses and multiplier of 18 to compute loss of dependency to the tune of Rs. 10,08,000/-. The deceased was unmarried son of claimants Subha Chand and Mewa, therefore, admissible deduction, in the circumstances of the present case, in the light of enunciation laid down in **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298** would be 50%. I would hasten to add that there is nothing on record suggestive of the fact that the claimants pleaded much less proved any special circumstances to deviate from deduction of 50%. However, the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 50%. In view of ratio laid down in ***Rajesh and others vs. Rajbir Singh and others 2013(3) RCR(Civil) 170***, claimants shall be entitled to benefit of future prospects to the extent of 50%. The mere fact that the matter is pending consideration before a Larger Bench of Hon'ble the Supreme Court of India is not sufficient to deny the said benefit till the judgment in ***Rajesh and others' case (supra)*** is varied or set aside. This part, the deceased was a young boy aged 21 years. There is nothing on record suggestive of the fact that the deceased was suffering from any disability affecting his capacity to work and earn livelihood for himself and his family. The deceased would not have stagnated at income of Rs. 7000/-, had he remained alive particularly in the face of fact that the State Governments revise minimum wages periodically after a short interval.

The Tribunal has an obligation to assess just and reasonable compensation. The Court of Appeal is competent to examine all the aspects of the matter in order to ensure that compensation assessed by the Tribunal is just and reasonable. Under the circumstances, by allowing deduction to the extent of 50% but extending benefit of increase in income for future prospects to the extent of 50%, loss of dependency comes to Rs. 7000 x 12x 18= 15,12,000/- + 7,56,000 (50%) = 22,68,000 -11,34,000 (50%) = **Rs.11,34,000/-** and the additional amount is **Rs. 51,000/-** (Rs. 11,34,000 – 10, 83,000).

So far as plea of the appellant that the driver was not holding a valid driving licence , onus to prove issue Nos. 5 and 6 was placed upon the insurance company. The insurance company did not examine a witness from the office of the District Transport Authority, Nagaland to prove that licence Ex. R-1 was not issued by the concerned authority. Tendering of certain documents on the basis of information purported to be received under the RTI Act is not sufficient to discharge the onus that licence Ex. R-1 is fake or invalid. The Tribunal, on a detailed consideration of the matter has rightly refused to accept plea of the insurer that driver of the offending vehicle was not holding a driving licence.

No other point has been raised.

The additional amount of Rs.51,000/- shall carry interest at the rate of 7.5% from the date of petition till realization, payable exclusively to mother of the deceased. A copy of the judgment be sent to the claimant(s).

The appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

28.8.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No