118.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3304-2017 (O&M)
Date of decision:16.05.2017

NATIONAL INSURANCE CO LTD ... Appellant

Versus

JASWINDER KAUR & ORS .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjeev K. Arora, Advocate, for the appellant.

HARI PAL VERMA, J. *(Oral)*

Learned counsel for the appellant-National Insurance Company Limited has filed the present appeal challenging the award dated 24.01.2017 passed by Motor Accident Claims Tribunal, Hoshiarpur (for short, 'the Tribunal'), whereby the claim petition filed by the claimants (respondents No.1 to 3 herein), under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Jasvir Singh @ Buta (i.e. husband of claimant-respondent No.1 and father of claimants-respondents No.2 and 3), was allowed and the claimants were held entitled for compensation of ₹15,38,400/-.

Briefly stated, as per the claim petition, on 11.11.2015, Jasvir Singh @ Buta (since deceased) was going from Hoshiarpur to his Village Chakowal Sheikhan on his motorcycle bearing registration No.PB-07AT-8509. Gurcharan Singh of his village, was following him on his own motorcycle. At about 2:20 PM, when they reached near the turning of Village Chaddial, then a car i.e. Santro came from the front side, being driven in a rash and negligent manner by its driver, without blowing any horn or indicator, and in the process of overtaking another vehicle going ahead of it, the car hit the motorcycle of Jasvir Singh @ Buta. Due to which, he fell down on the road and sustained major head injury and also received multiple grievous injuries on the other parts of his body. After the accident, the driver of the car stopped his vehicle and came to the place of accident and disclosed his name and address. In this respect, an FIR was lodged against the driver of the offending vehicle by the eyewitness-Gurcharan Singh.

On notice, the driver-Subhash Chander (respondent No.4 herein) appeared and filed written statement, denying the factum of accident and stated that he has been falsely implicated in the case. The appellant-Insurance Company also filed written statement taking preliminary objections regarding maintainability, invalid driving licence of respondent No.4, bad for non-joinder and mis-joinder of necessary parties. On merits, the involvement of the offending car in the accident was denied.

The Tribunal found the driver-respondent No.4 of the offending car bearing registration No.PB-08W-1053 to be responsible for the accident resulting in the death of Jasvir Singh. The Tribunal took the age of the deceased as 45 years as per Ex.A3 i.e. the passport of the deceased. Though the claimants claimed that the deceased was a carpenter and also working as a contractor, but in the absence of any evidence, the Tribunal presumed the income of the deceased as ₹9,000/- per month by observing that in these high rises of prices to run family by a married person, a person can easily earn ₹300/- per day by doing at least labour work. In view of judgments of Hon'ble Supreme Court rendered in ***<u>Sarla Verma and others Versus Delhi Transport Corporation and others-2009(3) RCR (c) 77</u>*** and ***<u>Rajesh Versus Rajbir Singh 2013(3) RCR (Civil) 170</u>***, the Tribunal added 30% increase to the above said income towards future prospects and accordingly, the income of the deceased was assessed as ₹11,700/- per month. The Tribunal awarded a total compensation of ₹15,38,400/- under various heads as under:-

Sr. No.	Head	Computation
1.	Income/Salary	Rs.9,000/- per month
2.	30% of (i) above to be added as future prospects	Rs.9,000/- + Rs.2700/- =Rs.11,700
3.	1/3rd of Sr. no.2 deducted as personal and living expenses	Rs.11,700/- - Rs.3900/- =Rs.7800/- PM income
4.	Compensation after applying multiplier of 14	Rs.7800/- x 12 x 14=Rs.13,10,400/-
5.	Loss of consortium for claimant no.1	Rs.1,00,000/-
6.	Loss of love and affection for children i.e. claimants no.2 and 3 jointly	Rs.1,00,000/-
7.	Funeral expenses	Rs.25,000/-
8.	Costs assessed	Rs.3,000/-
9.	Total compensation	Rs.15,38,400/-.

Learned counsel for the appellant-Insurance Company has restricted his argument on the quantum of future prospects and has argued that the issue regarding grant of future prospects is already pending adjudication before the Hon'ble Supreme Court (Larger Bench) in ***<u>National Insurance Company Limited Versus Pushpa and others-2015 (9) SCC 166</u>*** and, therefore, so long as the matter is not adjudicated by the Hon'ble Supreme Court, the respondents-claimants No.1 to 3 are not entitled for the amount under the head of 'future prospects'.

I have heard learned counsel for the appellant.

The Tribunal has provided for 30% increase in the income of the deceased towards future prospects i.e. ₹2,700/- per month. Since the matter regarding future prospects is pending before the Hon'ble Supreme Court, this Court finds that the appellant-Insurance Company should deposit the amount awarded by the Tribunal under the head of 'future prospects' with the Tribunal and the Tribunal shall deposit the amount so deposited by the appellant-Insurance Company, in a fixed deposit with a nationalized bank so as to carry maximum interest on it. If the ratio of the judgment in ***<u>Pushpa's case</u>*** (supra) is to the effect that loss of future prospects of income are not payable to those who were not in permanent employment, then the said amount would be refunded to the appellant-Insurance Company along with interest that would have accrued thereupon. If, on the other hand, the ratio of said judgment is to the contrary and such claimants are held entitled to the loss of future prospects of income, the same would be disbursed to the respondents-claimants along with interest that would have been accrued upon in the fixed deposit.

With the aforesaid observations, the present appeal is disposed of.

(HARI PAL VERMA)
JUDGE

16.05.2017
sanjeev

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