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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5149 of 2017 (O&M)
Decided on: 10.08.2017

The United India Insurance Co. Ltd. .... Appellant

Versus

Gangotri and others .... Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

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Rajbir Sehrawat, J.(Oral)

This is an Insurance Company's appeal challenging the award passed by the Motor Accident Claims Tribunal, Panchkula dated 01.05.2017 whereby the Tribunal had awarded an amount of ₹ 19,48,000/- on account of death of Munender Dutt, who was a Priest in the temple.

The facts in short are that on 18.02.2016, the deceased was returning to Ludhiana in a car after performing work of Priest in a marriage at Dehradun. When the car reached the intersection of Sector 25, Panchkula at 12.10 A.M., the daughter of co-passenger started vomiting and therefore, the car was stopped on the *Kachha* portion adjoining the road. Meanwhile, the offending vehicle Etios Toyota Car bearing No. HR-03-P-8380 came from Panchkula side being driven rashly, negligently and it straightway hit the car of the deceased from the front side. Due to this the deceased and one Sunil suffered multiple and grievous injuries. Since the injuries to the deceased were on vital parts therefore, he was rushed to General Hospital, Sector-6, Panchkula. But he succumbed to the injuries. Due to the death, the widow, sons and the daughters including minor daughters filed the claim petition. The Tribunal after appreciating the evidence granted aforesaid amount as compensation.

Assailing the award, learned counsel for the appellant submits that he is aggrieved of the quantum of the compensation awarded by the Tribunal. To assail the quantum of compensation, first of all, he submits that since the deceased was stated to be a salaried Priest at Shri Mukteshwar Maha Dev Shiv Mandir, Ludhiana-Chandigarh Road, Chahlan (Samrala), Ludhiana; and his salary was proved to be ₹ 7,000/- per month, therefore, no additional income on account of extra earning should have been added by the Tribunal while assessing his income. The second argument of the learned counsel for the appellant is that on account of the future prospects, the compensation should not have been awarded by the Tribunal.

I have considered the argument of learned counsel for the appellant. Besides salary certificate showing the salary of the deceased to be ₹ 7,000/- P.M., the learned Tribunal has assessed ₹ 4,000/- extra as the income of the deceased on the premise that he was a Priest by profession and in normal course such Priests earn extra amount also; by performing ceremonies on different occasions in social strata. There does not appear to be anything wrong in the findings recorded by the Tribunal. It is common knowledge and practice that the Priests in the temple, even if they are employed or given salary by the Temple management, are called by the public for performing various ceremonies; which are essential to the Hindu Religion for various occasions. On the fateful day also, the deceased was returning after performing such ceremony. Therefore, he would definitely be earning extra amount than his salary. Of course, there can be some guess work regarding his extra earning, however, since the Tribunal has assessed it to be ₹ 4,000/- per month, therefore, this assessment need not to be done again. Therefore, the Tribunal has rightly assessed the income of the deceased to be ₹ 11,000/-per month.

Learned counsel for the appellant has not disputed the multiplier applied and the deductions which were made by the Tribunal. In view of this, there is nothing wrong so far as the assessment of the dependency and the multiplier is concerned.

Learned counsel for the appellant has submitted that the compensation on account of future prospects should not have been awarded in the case since the matter regarding the compensation on account of future prospects is referred to the Larger Bench before the Hon'ble Supreme Court.

However, this contention of the learned counsel for the appellant is not to be accepted for two reasons. Firstly, in this case the deceased was not self-employed. He was proved to be salaried person. Therefore, a reference may not have direct relevance to this case. Secondly this Court has already taken a view in ***FAO No. 8067 of 2014*** titled as ***Future General Insurance Co. Ltd. Vs. Rekha and others*** that merely because the Supreme Court has kept a point for reconsideration through a reference to a Larger bench does not, by implication, overrule, the existing precedent on that point. The Existing precedent on that point shall still remain a binding precedent for this Court. Therefore, the claimant cannot be denied the benefit of compensation on account of future prospects. The relevant para of above said case is reproduced herein below for reference:-

> *"After considering the rival submissions of the counsels of the parties, this court is of the view that although the point of future prospects has*

> *been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger bench takes a contrary view; the judgment of the Hon'ble Supreme Court which holds the field as of today; is binding precedent for this court. The point as decided by the larger bench of the Supreme Court shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of a party before the Court can not be denied by this Court only for the reason that the Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for reconsideration does not, by implication, over-rule the existing judgment/precedent on that point. Therefore, the amount of compensation on account of future prospects cannot be denied to the claimants in this case on the ground that the matter has been referred to the larger bench."*

Therefore, the claimants would be entitled to the compensation on account of loss of future prospects as well as per the judgment of Hon'ble Supreme Court in ***2013(3) RCR (Civil) 170*** titled as ***Rajesh and others Vs. Rajbir Singh and others***. Hence, the Tribunal has rightly awarded the compensation on that count as well.

No other point was argued by learned counsel for the appellant.

In view of the above; Finding the appeal to be without any merit, the same is dismissed.

10th August, 2017 **[RAJBIR SEHRAWAT]**
shabha **JUDGE**

Whether speaking/reasoned - Yes
Whether reportable - Yes