IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.628 of 2017
Date of decision:- January 31, 2017

RELIANCE GENERAL INSURANCE CO. LTD.
....APPELLANT..

VERSUS

GIAN CHAND @ GYAN SINGH AND OTHERS
....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Sanjeev Kodan, Advocate,
for the appellant.

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JASPAL SINGH, J.

Instant appeal has been preferred against the award dated 18.11.2016 passed by Motor Accident Claims Tribunal, Karnal (for short, “Tribunal”) whereby claim petition preferred under Section 166 of the Motor Vehicles Act, 1988 (for brevity, “Act”) by respondents No. 1 to 3 has been allowed in the following terms:-

> *“On findings on issues No. 1 to 6, the petition of the petitioners succeeds and is partly allowed with costs and the petitioners are awarded the compensation of ₹8,71,480 along with interest @ 9% per annum from the date of filing of the petition till its realization. The respondents No. 1 to 3, being the driver, owner and insurer are jointly and severally liable to pay the said amount of compensation to the petitioners along with costs and interest but respondent No.3-Reliance General Insurance Company, insurer of*

the offending vehicle shall indemnify the compensation amount of ₹8,71,480/- along with interest at the rate of 9% per annum from the date respondent No.3 was impleaded as a party to the claim petition i.e. 26.047.2016 and prior to it, respondents No. 1 and 2 shall be liable to pay the interest on the compensation amount from the date of filing of the petition till 25.04.2016 because respondents No. 1 and 2 did not earlier bother to appear in the court to contest the claim petition and allowed themselves to be proceeded against ex-parte and after passing of the ex-parte award against them, they approached the court for setting aside the ex-parte award passed against them and by that time, respondent No.3 was not a party to the claim petition and therefore, in the considered opinion of this Court, respondent No.3-insurance company is liable to pay interest from the date when it was impleaded as a party to the petition. On realization of the compensation amount, the same be paid and disbursed to the petitioners in cash in equal shares."

2. During the course of arguments, learned counsel for the appellant-Insurance company has challenged the impugned award dated 18.11.2016, on the point of quantum of compensation submitting that the same is excessing and on higher side, keeping in view the facts and circumstances of the case in hand. Ld. Tribunal has gone erroneous while deciding the total compensation that the claimant is entitled to the tune of ₹8,71,480/-, that too, with interest @ 9% per annum from the date of filing of the petition till its actual realization on the death of Bohti Devi @ Moti Devi.

3. It is an undisputed fact that the claimants had earlier filed claim

petition No. MACT 0002213/2014 before the ld. Tribunal, Karnal arising out of the same accident, in which, the insurance company has not been impleaded as a party. The above said claim petition was allowed by the ld. Tribunal vide award dated 08.02.2016 and the claimants were awarded only a sum of ₹5,50,200/- along with interest.

4. Learned counsel for the appellant has further submitted that it is pertinent to mention that in the previous award dated 08.02.2016, driver and owner were proceeded against ex-parte. Subsequently, the driver and owner of the offending vehicle moved an application for setting aside the ex-parte award dated 08.02.2016 and at the time, they also disclosed the particulars of the appellant-insurance company. The application preferred by the driver and owner was allowed and the award dated 08.02.2016 was set aside. But while filing the aforesaid petition after impleading the insurance company and setting aside of ex-parte award dated 08.02.2016, ld. Tribunal has erroneously and illegally enhanced the amount from ₹5,50,200/- to ₹8,71,480/-, even there was no fresh documents or evidence adduced by the parties especially, the claimants.

5. The next contention of learned counsel for the appellant while challenging the impugned award is that the ld. Tribunal has wrongly assessed the income of the deceased Bhoti Devi @ Moti Devi as ₹5400/- per month. There is no documentary evidence with regard to the earnings of the deceased. It is well settled proposition of law that in the absence of any income's proof in a case of death of house hold lady, notional income should have been taken into consideration by Ld. Tribunal while assessing the compensation.

6. Similarly, the deceased was aged about 55 years at the time of her demise. Despite the fact, ld. Tribunal has wrongly added 15% income on account of future prospects. Hon'ble Supreme Court in case ***"Sarla Verma and others v. Delhi Transport and another; 2009 (3) RCR (Civil) 77*** has held that "where the deceased was more than 50 years, no addition should be made". Therefore, the aforesaid amount awarded on account of future prospect is against the settled proposition of law and deserves to be deducted from the compensation so awarded by the ld. Tribunal. Even otherwise, ld. Tribunal has wrongly added 15% of actual salary towards future prospects, as the deceased was not entitled to it, being self-employed. She was not drawing any fixed salary. Thus, the addition of 15% of the income towards future prospect while awarding the compensation is wrong.

7. Learned counsel for the appellant has further submitted that this Court in ***FAO No.2417 of 2013 (O&M), dated 21.09.2015***, titled as ***"Smt. Savita and others v. Satpal and others"*** has held as under:-

> *"So far as Munna Lal Jain (supra) is concerned, the same may not be applicable in view of the fact that the matter stood referred to larger bench in Rajesh and others (supra). Also in National Insurance Company Ltd. V. Pushpa and others (SLP No8058 of 2014 decided on 02.07.2014), Shashikala and others V. Gangalakshamma and another, the Supreme Court referred the matter to larger bench for deciding the point regarding addition of future prospect to the annual income. It was also mentioned that Rajesh and others (supra) stood referred to larger bench. Since reference has been made in different cases to larger bench for finally deciding the point regarding grant of future prospects, it would not be to*

grant the same now because in case a divergent view is received from the Supreme Court later on, it will not be possible for the Insurance Company to make recovery Also in Pushpa's case (supra), the Supreme Court had stayed recovery of the amount beyond ₹20,00,000/- as stay had been prayed for by the Insurance Company on account of future prospects"

8. Similarly, ld. Tribunal has also wrongly awarded a sum of ₹3 lacs on account of love and affection to the claimants, which is on higher side and is liable to be set aside.

9. This Court has given an anxious thought to the aforesaid submission made by learned counsel for the appellant but find the same to be without any legal and factual weight.

10. As far as the determination of income of the deceased Bohti Devi @ Moti Devi to the tune of ₹5400/- is concerned, it cannot be said to be on higher side. It has come on record that she was hale and hearty. She had been keeping two buffaloes and two cows and engaged in the business of selling milk. As per the evidence of the claimants, her total earnings was to the tune of ₹10,000/- per month. Moreover, she being a house hold lady was also supposed to perform other duties and the assessment of income to the tune of ₹5400/- per month can be said to be legally and factually justified. It is well settled proposition of law that while assessing the services of a house-wife, narrow meaning should not be given to the services rendered by her and it should be construed broadly. She is a full time working house-wife. She is a Mom, a Wife, a Daughter and a Daughter – in – law. She is an alarm clock, a cook, a maid, a teacher for the children, a waitress, a nurse, a nanny, a counselor and a comforter. She does

not get holidays, medical leave and works throughout the day and night. Thus, taking into consideration such services rendered by a house wife, assessment of a sum of ₹5400/- by the ld. Tribunal cannot be termed to be on higher side. Since, she was in the age group of 50-60.

11. Similarly, as far as the grant of compensation on account of future prospect is concerned, this Court is not impressed from the contention put forth by the learned counsel for the appellant in this regard. Rather, the contention put forth by him is against the dictum laid down by Hon'ble Apex Court in ***"Rajesh and others v. Rajbir Singh and others", (2013) 3 RCR (Civil) 170,*** in which, it has been specifically mentioned that in the age group of 50-60, addition on account of future prospect should be 15%. In the case in hand also, only the income of the deceased to the extent of 15% has been taken towards future prospect. The mere fact that the matter pertaining to the grant of compensation on account of future prospect is pending before the larger bench of Hon'ble Apex Court, it cannot be said that the claimants are not entitled to the compensation till the decision of the reference made to the larger bench for the grant of compensation on account of future prospect. The observation made in this regard in case ***Rajesh and others' case (supra)*** holds the field at least till the same is modified or reversed.

12. Similarly, this Court also does not find any illegality or perversity in respect of compensation awarded on account of loss of love and affection by the ld. Tribunal to the tune of ₹3 lacs i.e. ₹1 lac each to the claimants.

13. Thus, this Court is of the considered view that the

compensation awarded by the ld. Tribunal can neither be termed to be higher or excessive nor exorbitant. Rather, the same is absolutely just and adequate. Thus, no interference in the impugned award is legally and factually justified.

14. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, the same is dismissed.

15. No order as to costs.

January 31, 2017 **(JASPAL SINGH)**
sonika **JUDGE**

Whether speaking/reasoned: Yes

Whether reportable: Yes/No