IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205-A **FAO-5776-2002 (O&M)**
Date of Decision : 8.8.2018

Nirmal Dass and others **....Appellants**

vs.

Maha Kant Yadav and others **....Respondents**

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Saurabh Kapoor, Advocate and
Mr. Sagar Aggarwal, Advocate for the appellant.

Ms. Shamsher Kaur, Advocate
for respondent No.-3-insurance company.

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AJAY TEWARI, J. (Oral)

CM-7814-CII-2016

Counsel states that he does not wish to press application under Order XLI Rule 27.

Dismissed as such.

Main Case

This appeal has been filed against the dismissal of the claim petition.

Brief facts of the case are that an accident has occurred between a Tata Sumo and a truck near ITI Chowk, Karnal on 16.1.1997. A total of eight claim petitions were filed and all of them were tried together. At the stage of rebuttal evidence, the claim petition out of which his appeal arises was some-how get segregated and was separately decided and dismissed as mentioned above.

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Learned counsel for the appellant has pointed out a very strange fact. He stated that in paragraph 7th, the Tribunal had returned the finding of negligence by correctly noticing that out of this accident many claim petitions had arisen and had relied upon the evidence led in the other cases for returning the finding of negligence but refused to consider the statements of the claimant filed in an other case (relating to compensation for his own injury) where the appellant No.1 had specifically mentioned that the deceased in the present case was his wife, as also her income and went on to hold that appellant No.1 was required to establish relationship and income independently in this case. He has argued that it was not open to the Court to consider material on the files of the connected cases to return the finding on one issue and to ignore it for another issue.

Learned counsel for the insurance company has however argued that the Tribunal did not act illegally in ignoring the material in respect of the relationship and income.

In my considered opinion, the argument of the counsel for the appellants have to prevail. It is not disputed by the insurance company that there was one accident where many deaths had occurred. Once the Tribunal had accepted the material regarding the negligence from other cases it could not take an unduly pedantic approach in discarding the statement of the claimant in those connected cases for the purpose of relationship and income. Consequently, I hold that relationship was proved.

As regards income, however, apart from the bald statement of the appellant No.1 there was no objective evidence which may show that the deceased was earning some income. Counsel for the appellants pointed out

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that there was material showing that the deceased was partner in the company, but that is also not a proof of income. In the circumstances, the deceased had to be considered as a house wife.

Counsel for the appellants has further argued that even if the deceased had been treated as housewife her contribution to the family would have to be computed in view of ***Lata Wadhwa and others Vs. State of Bihar and others, (2001) 8 SCC 197.*** As per him, in the case of ***Lata Wadhwa's (supra)*** the Supreme Court held the notional income of a house wife to be Rs.3000/- per month in the year 1989. Counsel for the insurance company has not been able to deny this fact. Considering that in the present case, as the accident took place in the year 1997, I deem it appropriate to take notional income of the deceased as Rs. 3500/- per month. Ordered accordingly.

The deceased was 42 years old at the time of accident. As per the judgment of Supreme Court in the matter of ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*** the Supreme Court laid down that for the age of 42 years, multiplier should be 14. I find this to be indeed so. Consequently, it is held that multiplier of 14 has to be applied.

Counsel for the appellants has argued that under the conventional heads total amount of Rs. 70,000/- has to be granted as per the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009.*** Counsel for the insurance company is not in a position to deny these facts. Consequently, I award Rs. 70,000/- under the

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conventional heads.

The appellant would be entitled to interest at the rate of 7.5 % from the date of filing of the claim petition till the date of payment.

Counsel for insurance company states that since the appeal has been dismissed they have not filed any cross-objections in this case but in the similar connected case they have filed cross-objections for rights to recover which has been granted vide even order in connected case. Similarly, she has referred to the judgments of the Supreme Court in the matters of **"*Ram Babu Tiwari v. United India Insurance Co. Ltd. and others"*** reported as ***2008 ACJ 2654,*** **"*Francisca Luiza Rocha and others vs. K. Valarmathi and Others"*** reported as ***2018(1) RCR (Civil) 409*** and **"*National Insurance Company Limited vs. Jarnail Singh and others"*** reported as **(*2007) 15 SCC 28.***

Resultantly, the appeal is disposed of and the insurance company would have the right to recover the same from the owner.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No

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