IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3835 of 2011 (O&M)
Date of decision: 12.10.2018

ICICI Lombard General Insurance Company Ltd. .... Appellant

Versus

Kuldeep Kaur and others ..... Respondents

FAO No.4245 of 2011 (O&M)

Kuldeep Kaur and others .... Appellants

Versus

Manjit Singh and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Jaspreet Kaur, Advocate for
Mr.R.S.Dhull, Advocate
for the appellant in FAO-3835-2011 and
for respondent No.2 in FAO-4245-2011.

Mr. Raj Kapoor Malik, Advocate
for respondents No.1 to 3 in FAO-3835-2011 and
for the appellants in FAO-4245-2011.

Mr. Rajesh K.Kataria, Advocate
for respondent No.4 in FAO-3835-2011 and
for respondent No.1 in FAO-4245-2011

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Avneesh Jhingan, J.(Oral)

The insurer of truck bearing registration No.HR-38BG-5075 (for brevity, 'offending vehicle') and the legal heirs of Balwinder Singh (deceased) have filed these two appeals against the award dated 01.10.2010 passed by Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal').

2. The brief facts emanating from the record are that on 08.11.2008, Balwinder Singh was coming from Gurudwara Pehowa to his village Jagdishpura on his motorcycle bearing registration No.HR-08E-2701. When he reached near Engineering College at Ambala Kaithal Road, he was struck by a rashly and negligently driven offending vehicle. As a result of the accident, Balwinder Singh suffered multiple injuries and died on the spot. FIR was registered at Police Station Sadar, Kaithal.

3. The widow and two sons of the deceased filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for brevity, 'the Act'). The Owner and driver of the offending vehicle and the ICICI Lombard General Insurance Company Ltd. were arrayed as respondents No.1 to 2 respectively in the claim petition.

4. The Tribunal, after considering the facts and after appreciating the evidence produced, held that the accident occurred due to rash and negligent driving of the offending vehicle. The age of the deceased was taken as 51 years. The monthly income of the deceased was assessed as ₹12,000/-. The Tribunal awarded a sum of ₹10,76,000/- along with interest @ 7.5% per annum. The owner and insurer of offending vehicle were held jointly and severally liable to pay compensation.

5. I have heard learned counsel for the parties and perused the

paper-book and record.

6. Learned counsel for the claimants argued that the Tribunal had not awarded any future prospects and a sum of ₹20,000/- awarded under the conventional head of loss of consortium, loss of estate and funeral expenses is on the lower side.

7. Learned counsel for the insurer resisted any further enhancement. He argued that the insurer is in appeal as the Tribunal had wrongly made a deduction of 1/3rd for self expenses ignoring that out of the three claimants, two sons of the deceased were of 25 and 24 years of age and they are not minors. He further argued that in the claim petition, the claimants themselves had claimed ₹10 lakhs as compensation and Tribunal erred in awarding a sum of ₹10,56,000/- and there cannot be any further enhancement.

8. There is a fallacy in the arguments raised by learned counsel for the insurer that the Tribunal can not award compensation beyond the amount claimed in the claim petition. The Courts are duty bound to award just and equitable compensation. The Act is a welfare legislation and there cannot be any estoppel on the Tribunal to restrict itself only to the amount claimed in the petition.

9. There is no doubt that two sons of the deceased were 25 and 24 years of age but it has not been proved that they were not dependent and having their own source of income. Rather the claimants by way of statement of PW1-widow of the deceased before the Tribunal specifically stated that her sons were dependent on the deceased. There is no contrary

evidence on record. Even the statement was not rebutted by the Insurance Company. Hence, 1/3rd deduction for self expenses has rightly been made by the Tribunal which is inconsonance with the decision of the Supreme Court in ***Sarla Verma and others Vs. Delhi Transport Corporation and another, (2009) 6 SCC 121.***

10. The appeal filed by the insurer of the offending vehicle has no merits and deserves dismissal.

11. The contentions raised by learned counsel for the claimants deserve acceptance.

12. In consonance with decision of the Supreme Court in the case of ***National Insurance Company Ltd. vs. Pranay Sethi and Ors., 2017 AIR (SC) 5157,*** 15% future prospects are awarded as deceased was in the age group of 50-60 and had a permanent job. Further, a sum of Rs.15,000/- each is awarded for loss of estate and funeral expenses and Rs.40,000/- is awarded on account of loss of consortium to the widow of the deceased.

13. There is no dispute with regard to figure of annual dependency calculated by the Tribunal i.e. ₹10,56,000/- therefore, 15% on the said amount is awarded as future prospects i.e ₹1,58,400/-. Further, the conventional heads are enhanced from ₹20,000/- to ₹70,000/-.

14. The award dated 01.10.2010 is modified to the extent that the amount awarded by the Tribunal of ₹10,76,000/- is enhanced by a sum of ₹2,08,400/-.

15. The claimants shall be entitled to enhanced amount along with interest @ 7.5% per annum from the date of filing the claim petition till the

realisation of the amount. However, it is clarified that the enhanced amount shall be disbursed in the same proportion to the claimants as was held by the Tribunal.

16. The net result is that the appeal filed by the claimants is partly allowed and the appeal filed by the Insurance Company is dismissed.

(AVNEESH JHINGAN)
JUDGE

12.10.2018
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1.Whether the order is speaking/reasoned: Yes/No

2.Whether the order is reportable : Yes/No