IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.1355 of 2013 (O&M)
Date of decision : 16.10.2018

Reliance General Insurance Company Ltd.

...Appellant

Versus

Neelam Nagpal and others

...Respondents

2. FAO No.6287 of 2013 (O&M)
Date of decision : 16.10.2018

Neelam Nagpal and others

...Appellants

Versus

Nihal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Suman Jain, Advocate for the appellants
(In FAO No.1355 of 2013)
for respondent No.3 (In FAO No.6287 of 2013)

Mr. Sanjay Verma, Advocate for the appellants
(In FAO No.6287 of 2013)
for respondent Nos.1 to 3 (In FAO No.1355 of 2013)

Mr. Rajan Bansal, Advocate
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ANIL KSHETARPAL, J. (ORAL)

By this judgment, two cross appeals, one filed by the Insurance Company and second filed by the claimants shall stand disposed of.

Rakesh Nagpal aged about 48 years died in a motor vehicular accident. Insurance Company has challenged the award passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter to be referred as “the Tribunal”) on two counts:-

1. Quantum.

2. On Contributory negligence.

Whereas claimants have sought enhancement of the compensation assessed by the Tribunal.

Let us first deal with the contributory negligence.

Learned counsel for the appellant-Insurance Company has submitted that since it was a case of head on collision between truck and car, therefore, the Court must assume that it was contributory negligence. He has further submitted that eye witness who was travelling in other vehicle has admitted that motor car was being driven at the speed of 90 KM. It may be noted that both the eye-witnesses who have examined, have stated that the offending vehicle i.e. truck came on the wrong side and hit the motor car. Still further, eye-witnesses have also stated that the deceased who was driving the ill-fated car had applied the breaks. The driver of the offending vehicle i.e. truck, has not appeared in evidence. The evidence of the eye-witnesses has gone unrebutted that the offending truck came on the wrong side. In such circumstances, this Court does not find any substance in the argument of the learned counsel that since it was a case of head on collision, therefore, the Court must assume that it was contributory negligence.

As regards the compensation, learned counsel for the appellant-Insurance Company has submitted that one income tax return showing income of the deceased was submitted after the death of the deceased and, therefore, this cannot be made basis to assess the compensation.

It may be noted that the deceased was regularly filing the income tax returns and income tax returns from the financial year 2005-06 which have been produced on record. As per income tax return for the financial year 2006-

07, the deceased is shown to have earned ₹7,27,373/-. If one have a close look at the Profit and Loss account, it is apparent that the deceased earned ₹22,80,490/- as speculation profit (commodity). Apart therefrom, he also received salary of ₹2,40,000/- from Abhishek Finance Private Limited. However, since he suffered loss from Rakesh Nagpal (share business), therefore, income stood reduced. Even with regard to the income tax return of the financial year 2006-07, it is apparent that the deceased earned ₹6,49,62,589/-. However, on account of losses, the profit is reduced and net return had been filed for ₹19,68,607/-. No doubt, in the financial year 2007-08, there is a loss of ₹8,24,415/-. With regard to the financial year 2009-10, income tax return was filed after the death of the deceased, showing the profit of ₹22,21,291/-.

Learned Tribunal has assessed the income of the deceased to be ₹10,00,000/- keeping in view the nature of the business. However, learned Tribunal first deducted ₹2,00,000/- under Chapter 6-A of the Income Tax Act and thereafter deducted 30% of the income on account of the tax deduction and thus arrived at a figure of ₹5,60,000/-. Further, the income has been reduced by 1/3rd while assessing the dependency at ₹3,73,000/-.

In the considered view of this Court, the Tribunal erred in making a deduction of ₹2,00,000/-. Still further, the exempted income and standard deduction has not been taken care of. Still further, the Tribunal, has not awarded any amount on account of enhancement of income in future. The deceased was approximately of 48 years of age and, therefore, as per the judgment passed by Hon'ble the Supreme Court in case *SLP No.25590 of 2014 titled as National Insurance Company Ltd. Vs. Pranay Sethi and others*, claimants are entitled to 25% increase in the income assessed on account of future prospects. Learned Tribunal has already awarded ₹40,000/- for loss of love and affection and ₹20,000/- for funeral expenses. For funeral expenses, the Tribunal has wrongly awarded ₹20,000/- which should be ₹15,000/-. Hence, the compensation is re-worked as under:-

Heads	**Awarded by the Tribunal**	**Awarded by the High Court**
Income assessed + future prospects	₹10,00,000/-	₹10,00,000/- (+) ₹2,50,000/- ₹12,50,000/-
(-) Income Tax		
1st ₹1,60,000/- exempted	Deduction under Chapter VI A i.e. ₹2,00,000/-	Exempted
2nd ₹1,60,001/- to ₹3,00,000/- @ 10% = ₹14,000/-	Tax @ 30% (₹10,00,000/- - ₹2,00,000/- = ₹8,00,000/-)	₹14,000/-
3rd ₹3,00,001 to ₹5,00,000/- @ 20% = ₹40,000/-	₹8,00,000 @ 30% = ₹2,40,000/-	₹40,000/-
4th ₹5,00,001/- to ₹12,50,000/- @ 30% = ₹2,25,000/-		₹2,25,000/-
Total Income Tax		₹2,79,000/-
Income after tax deduction		₹9,71,000/-
(-) Deduction	₹1,87,000/-	(- 1/3rd) = ₹3,23,667/-
	₹3,73,000/-	₹6,47,333/-
Multiplier	₹3,73,000/- x 13 = ₹48,49,000/-	₹6,47,333/- x 13 = ₹84,15,329/-
Conventional Heads		
Loss of Estate		₹15,000/-
Funeral Expenses	₹20,000/-	₹15,000/-
Consortium	₹20,000/-	₹40,000/-
Loss of Love and affection	₹40,000/- (₹20,000/- each)	₹40,000/- (₹20,000/- each)
Total Compensation	₹49,29,000/-	₹85,25,329/-
Enhanced Compensation = Compensation awarded by High Court (-) Compensation awarded by MACT	₹35,96,329/- {₹85,25,329/- (-) ₹49,29,000/-}	

The enhanced amount of compensation i.e. ₹35,96,329/- shall be payable with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till realization.

In view of the above, appeal filed by the Insurance Company is dismissed whereas the appeal filed by the claimants is allowed.

16.10.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No