IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1317 of 2016 (O&M)
Date of decision: 02.04.2018

The Oriental Insurance Company Limited

….Appellant

Versus

Tamanna Bajaj and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Avtar, Advocate, for the appellant-Insurance Company.

Mr. A.S. Virk, Advocate, for respondent Nos.1 to 5.

****

RITU BAHRI J. (Oral)

The Oriental Insurance Company Limited-appellant has filed this appeal against the award dated 06.10.2015 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.7,25,750/- has been awarded in favour of the claimant-respondent Nos. 1 to 5 on account of death of Rakesh Bajaj in a motor vehicular accident which took place on 29.03.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 29.03.2012, Rakesh Bajaj (since deceased) was going towards Kaithal in car Tata Vista No.HR-99-KJT-7685 in order to get the samples of ready made garments checked there. After completing his job, when he was coming back to Karnal and reached near village Zarifabad, in the meantime, he lost control over the vehicle and it had struck against the tree, as a result of which, Rakesh Bajaj received multiple injuries and died at the spot. He was taken to G.H. Karnal, where postmortem of the dead body was conducted. With regard to the accident, DDR No. 23 dated 29.03.2012 was registered at Police Station, Sadar, Karnal. Consequently, claimant-respondents filed a claim petition under Section 163-A of the M.V. Act before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question resulting into the death of Rakesh Bajaj had taken place due to the use of car bearing registration No. HR-99-KJT-7685 and thus, returned finding on issue No.1 in favour of the claimants. Ultimately, the claim petition was allowed and the compensation was assessed as under:-

1.	Income	Rs.3300/- per month i.e. Rs.39,600/- per annum
2.	50% to be added as future prospects	Rs.1650/- i.e. Rs.39,600 + 19,800/- = 59,400/-
3.	1/4th as number of dependents are five	Rs.59,400 – 14850 = Rs.44,500/-
4.	Compensation after applying multiplier of 15	Rs.44,500/- x 15 = Rs.6,68,250/-
5	Amount awarded under conventional heads i.e. loss of love and affection, funeral expenses, last rites	Rs.50,000/-
6.	Loss of consortium	Rs.5000/-
7.	Loss of estate	Rs.2500/-
	Total compensation awarded	Rs.7,25,750/-

Feeling dissatisfied with the impugned award, the Insurance

Company-appellant has preferred the present appeal.

The Insurance Company is challenging the impugned award on the ground that while assessing income of deceased as per second schedule of the Act, 50% increase on account of future prospects could not be granted and even under the conventional head, Rs.50,000/- could not have been awarded.

I have heard learned counsel for the parties and perused the case file.

A perusal of the impugned award shows that it was not a case, where the accident had taken place between two vehicles. It was a case, where driver (deceased) had lost control over the vehicle. Even, this fact is recorded in the DDR itself. Since, there was no negligence and the vehicle had gone out of control and hit a tree, claim petition under Section 166 of the Act could have been filed for seeking compensation on account of the death of Rakesh Bajaj. There was no requirement for proving negligence in this case and claim petition under Section 166 of the Act could have been filed, as held by this Court in ***Sudesh Sharma and others vs. Prahalad Kumar Garg and another,*** FAO No.2492 of 2002 (decided on 24.07.2014.

Keeping in view that the claimants-respondent Nos.1 to 5, in the present case, are widow, two minor children and old parents, this Court while exercising revisional jurisdiction, proceeds to treat this claim petition as a petition under Section 166 of the Act. In view of the peculiar circumstances of this case, the compensation is hereby re-assessed per judgments passed by Hon'ble the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) and ***Sarla Verma and***

others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) Page 77 as under

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.5000/- per month
(ii)	40% of (i) above to be added as future prospects	5000 + 2000 = Rs.7000/-
(iii)	1/4th of (ii) above is deducted as personal expenses of the deceased	7000 – 1750 = Rs.5250/-
(iv)	Compensation after multiplier of 15 is applied	Rs.5250/- x 12 x 15 = Rs.9,45,000/-
(v)	Compensation under conventional head	Rs.70,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs.10,15,000/-**
(vii)	**Enhanced amount of compensation**	**Rs.10,15,000 – 7,25,750 = Rs.2,89,250/-**

The enhanced amount of compensation of **Rs.2,89,250/-** shall be payable within a period of two months to the claimants from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of **"*Shri Nagar Mal and others vs. The Oriental Insurance Company Ltd. and others*,** Civil Appeal No.448 of 2018 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018." Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the impugned award is modified to the above extent and appeal filed by the insurance company stands disposed of.

(RITU BAHRI)
JUDGE

02.04.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No