IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

X Obj No.184-CII of 2014
FAO No.5280 of 2013
Date of Decision.17.01.2018

Reliance General Insurance Company Ltd. ....Appellant

Vs

Abhay Singh and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Suman Jain, Advocate
for the appellant.

Mr. Puneet Sharma, Advocate
for respondent Nos.1 and 2.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of the appeal preferred by the insurance company challenging the award passed by the Tribunal and the cross objection at the instance of the claimants for enhancement on account of death of one Sunil Kumar, who unfortunately died in a motor accident involving a balero jeep bearing registration No.HR-66-3405 and motor cycle bearing registration No.HR-36H-3846. The claimants are the parents.

Mr. Suman Jain, learned counsel appearing on behalf of the appellant-insurance company challenges the award of the Tribunal on two counts:-

(i) The vehicle i.e. balero jeep was not involved in the accident as the FIR was lodged with the police did not disclose the number and the ownership of the vehicle, as the insurance company appointed investigators for ascertaining whether the vehicle was involved in the accident and two investigators RW3 and RW4 had been examined and report of one of the investigators revealed that the offending vehicle was not involved in the accident.

(ii) The deceased was an Engineer and was drawing a salary of ₹30,000/- per month with an additional benefit of ₹4000/- per day as rig allowance when he was on work in sea, revised in November, 2007 as ₹7000/- per day but the Tribunal while taking the income of the deceased as per Ex.P7 to the tune of ₹7,70,000/- from 1.4.2007 to 31.03.2008 added to it ₹7000/- per day for 182 days and therefore, took the income of the deceased as ₹16,34,000/- per annum, which came to ₹11,43,800/- per annum after deduction of 30% income tax. After making a deduction of one half towards personal expenses and applying a multiplier of 11, the total compensation came to be ₹63,00,900/-. In the absence of any documentary proof, the Tribunal grossly erred in adding the rig allowance @₹7000/- per day for 182 days in the salary of the deceased on the basis of mere conjectures and surmises, thus, there is illegality and perversity.

On the other hand, learned counsel for the claimants-cross objectors submitted that the income assessed by the Tribunal is perfectly legal and justified but the choice of multiplier is wrong. It ought to have adopted a multiplier of 17 keeping in view the fact that the deceased was 26 years of age at the time of accident. Nothing provided on account of future prospects, much less, the conventional heads of claim are also lower side, thus, there is scope for definite enhancement.

I have heard learned counsel for the parties and appraised the paper book. In order to lend support to the aforementioned arguments of Mr. Jain, heavy reliance has been laid to the statement of investigator RW3 to enable this Court to form an opinion that the balero jeep was not involved in the accident but the fact of the matter is that the driver and owner appeared and admitted the accident. RW-1/Ashok Kumar, driver of the offending vehicle admitted that a criminal case has been registered against him in which he is facing trial. The cross-examination of RW1 reads as under:-

> "*xxxx by Sh. Sunil Yadav learned counsel for petitioner.*
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> *It is correct that I was driver of the said vehicle on the date of accident. It is correct that a criminal case registered against me and I am facing the said trial. It is incorrect to suggest that I was driving the vehicle in rash and negligent manner on that day. It is incorrect to suggest that I am not having the valid and effective driving licence. It is incorrect to suggest that the accident was not caused due to rash and negligent driving of the driver of the motor cycle.*
>
> *xxxx by Shri Anil Yadav learned counsel for respondent No.3.*
>
> *It is incorrect to suggest that my aforesaid licence was fake licence or that I was not possessed on that day valid and effective driving licence at the time of accident. It is incorrect to suggest that I have deposed falsely."*

The insurance company has not been able to belie the statement of the driver despite extensive cross-examination. There is no finding on record as to whether any eye witness or any other witness examined in the criminal case, has turned hostile, which may entail into acquittal on the basis of benefit of doubt and an inference could be drawn that the vehicle was not involved in the accident. Not only this even author of the FIR, who was examined as PW5, also admitted that he remembered the number of the vehicle. Cross-examination of PW5 reads as under:-

> "*xxxx by respondents counsel.*
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> *It is incorrect that I was no present at the time of accident. It is incorrect that I had not witnessed the accident. The registration number of the offending vehicle was HR-66-3405. It is incorrect that the accident took place due to rash and negligent on the part of Sunil. It is incorrect that due to his own negligence, the accident occurred and Sunil died in the accident. It is incorrect that I am deposing falsely."*

All these facts lead to irresistible conclusion that the balero jeep insured with the appellant-insurance company was involved in the accident, therefore, the argument of Mr. Jain on this count is hereby rejected.

As regards the argument on the quantum, it would be appropriate to reproduce the finding of the Tribunal with regard to assessment of income of the deceased in paragraph 29 of the award, which reads as under:-

> *"29. In order to prove the income of the deceased Sunil Kumar, the petitioners have examined PW6 Ashish Jhunjhnuwala, Chief Manager, IOT Infrastructure and Energy*

Services of Newsco Directional & Horizontal Drilling Services Ltd. Mumbai who stated that Sunil Kumar deceased was employee of their company and he proved on record identity card of the deceased Ex.P5, his appointment letter Ex.P6 and salary Form-16 Ex.P7, copy of PAN Mark-A, salary receipt for month of July 2007, Ex.P8, salary receipt for the month of August, 2007 Ex.P9, salary receipt for the month of October, 2007 Ex.P10, salary receipt for the month of November, 2007 as Ex.P11 for the financial year 2007-2008. Admittedly, the deceased Sunil Kumar expired on 8.12.2007, therefore, it would be appropriate if the salary for the month of November, 2007 is taken into consideration for assessing the dependency of the petitioners. As per the salary slip Ex.P11, the basic consolidated salary of the deceased was 30,000/- per month. It is also clear from the salary slip Ex.P11 that deceased was entitled for rig allowance at the rate of Rs.7000/- per day when he is in sea. Rig allowance is given to the deceased on a particular day when he works in the sea. PW6 stated in the cross-examination that Rig allowance means in lieu of job at Drill Site. Therefore, it is clear that the deceased is not entitled to get rig allowance on holidays, vacations and while working in the office of the company. Deceased was employed in April, 2007 in the company as per appointment letter Ex.P6. As per Ex.P7, total income of the deceased was Rs.7,70,000/- from 1.4.2007 to 31.3.2008. At the time of his death deceased was on vacations. Considering the period of annual vacations, *holidays and the duty period of the company office, this Tribunal assess that deceased would have normally worked for six months i.e. 182 days in the area at the drill site. Therefore, the annual income of deceased would include rig allowance for six months i.e. 192 days @Rs.7000/- per day (12,74,000/-) and basic salary @Rs.30,000/- per month of the entire year. Calculating the total income of the deceased on this basis, his total annual income comes to Rs.16,34,000/-. After deducting income tax at 30% of the total income, his annual income comes to Rs.11,43,800/-."*

There is no dispute to the income of the deceased as ₹20,000/- per month and the rig allowance given @₹4000/- per day, revised in November 2007 to ₹30,000/- per month and rig allowance to ₹7000/- per day, when he worked at sea site. The only point for consideration is whether the assessment of rig allowance for 182 days is justified or not. I have gone through the salary slips brought on record Ex.P8 to Ex.P10 wherein the rig allowance has been added in the salary and every month deceased was paid salary after deduction of the tax by the employer itself. As per Form-16, Ex.P7, it has been mentioned that a sum of ₹1,21,400/- has been deducted at source and paid to the credit of the Central Government i.e. the tax paid by the employer on behalf of the employee under Section 192(1) on perquisites and the balance tax payable was shown as ₹64,000/-, in essence, the tax liable to be deducted was ₹1,85,400/-. Therefore, it is crystal clear that the Tribunal has committed grave error in providing rig allowance @₹7000/- per day for 182 days and added the same in the salary of the deceased, in essence, it erroneously provided the rig allowance doubly.

Keeping in view the aforementioned, I will take the income of the deceased as ₹5,84,600/- per annum after deducting income tax. I will make an increase of 40% on the same for future prospects, make a deduction of one half for personal expenses and adopt a multiplier of 17 to assess the loss of dependency as ₹69,56,740/-. I will further add to it ₹15,000/- each for loss of estate and funeral expenses.

In all, the total compensation payable shall be ₹69,86,740/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till realization. The enhanced amount shall be distributed equally between the claimants. The liability shall remain the same as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above extent. Resultantly, the appeal filed by the insurance company is dismissed and the cross objections filed by the claimants-respondents are allowed.

(AMIT RAWAL)
JUDGE

January 17, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No