IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No.198-CII of 2014 in/and
FAO No.5821 of 2014(O&M)
Date of Decision: 04.07.2018

Shri Ram General Insurance Company ....Appellant

Vs.

Priya Gupta and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Rajbir Singh, Advocate, for the appellant.

Mr.Tarun Dhingra, Advocate, for respondent No.1to 3/cross-objector.

Services of respondents No.4 to 6 dispensed with.

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RITU BAHRI, J. (ORAL)

Present appeal has been preferred by the claimant-appellant (for short 'the appellant'), against award dated 11.02.2014, passed by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') vide which compensation to the tune of Rs.42,31,000/- was awarded to the claimants on account of death of Ankit Mittal in a motor vehicular accident.

The claimants/respondents No.1 to 3 have filed cross-objection for enhancement of compensation as Awarded by learned MACT, Kurukshetra.

FACTS NOT IN DISPUTE

On 24.06.2012, the deceased-Ankit Mittal was driving his motor cycle bearing registration No.HR-07P-8715 and he was followed by his younger brother namely Amit Gupta on his separate motor cycle bearing registration No.HR-07P-8715 and he was followed by his younger brother namely Amit Gupta on his separate motor cycle bearing registration No.HR-07P7384 that about 1800 hours, when they reached some ahead from Gurudrawa Chhathi Patshahi near Ambedkar Chowk, Thanesar, in the meanwhile, respondent No.1 while driving bus bearing registration No.HR-

65-B-1177 rashly, negligently, at a high speed and without observing traffic rules, came from back side i.e. Pehowa side and after crossing the motor cycle of Amit gupta, dashed the offending vehicle in the motor cycle of Ankit Mittal from behind, due to this impact, Ankit Mittal fell on the road along with his motor cycle that Ankit Mittal received injuries. After causing the accident, Ankit Mittal was taken to Aggarwal Nursing Home, Thanesar, where doctors declared him dead. On the statement of Amit Gupta, FIR was registered against the respondent No.1.

COMPENSATION ASSESSED BY MACT

The Insurance Company has not challenging the impugned Award on the finding of issue No.1 which was granted in favour of claimant and against the respondent No.4 i.e. Surinder Pal-driver of the offending vehicle. The appellant/Insurance Company is challenging the Award on the quantum of compensation which is highly excessive. The learned Tribunal has assessed the income of the deceased by taking his income from his income tax return Ex.P-7 to Ex.P9, Ex.P12 and Ex.P13. The relevant income tax return was Ex.P9 for the financial year 2011-12 and in that year, his gross income was Rs.2,55,154/-. As per Ex.P9, Rs.30,000/- had been shown as income from house property and Rs.1,35,460/- was shown from profit and gain from the business and Rs.89,694/- was shown income from other sources. It was further argued by the learned counsel for the appellant/Insurance Company herein that Rs.30,000/- would remain intact even after the death of the deceased as it was income from the house property. There was merit in the argument advanced by learned counsel for the Insurance company notwithstanding the fact that it was argued by learned counsel for the petitioners that deceased was managing the property because there was no detail about any particular business of the deceased pertaining to house property and also any management of the house property. Thus, after deducting Rs.30,000/- from the gross income of the deceased shown in Ex.P9, the annual income of the deceased comes to Rs.2,25,154/- which comes to Rs.18,762/- per month, which was rounded off to Rs.18,500/-. The Tribunal held that the deceased was 25 years old. The factum of accident had been proved and the offending vehicle was insured with appellant-Insurance Company. The compensation has been assessed as under:

Sr.No.	Heads of compensation	Amount
1	Income	Rs.18,500/- p.m.
2.	Future prospect 50%	Rs.18,500/- + Rs.9,250/-= Rs.27,750/- p.m.
3.	Annual loss of dependency	Rs.27,750/- X 12= Rs.3,33,000/- per annum
4.	Deduction 1/3rd	Rs.3,33,000/- --- Rs.1,11,000/-= Rs.2,22,000/-
5.	Total loss of dependency after applying the multiplier	Rs.2,22,000/- X 18= Rs.39,96,000/-
6.	Loss of estate	Rs.10,000/-
7.	Funeral Expenses	Rs.25,000/-
8.	Loss of consortium	Rs.1,00,000/-
9.	Care and guidance of minor children	Rs.1,00,000/-
	Total	Rs.42,31,000/-

Learned counsel for the Cross-objector/respondents No.1 to 3 contends that the compensation awarded by the Tribunal is on the lower side and deserves to be enhanced. On the other hand, the learned counsel for the appellant/Insurance Company have vehemently opposed the present appeal.

RE-ASSESSED COMPENSATION

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

A perusal of the income tax return from the record shows that an amount of Rs.89,694/- was shown as income from other sources and this income has not been reduced from the main income. Moreover, income from interest would continue to come to the family members. The income tax return has been duly proved by PW-4 Ajay Rana, Senior Assistant. Hence, the amount i.e. Rs.89,694/- which comes from profit and gain from other sources has to be deducted and after deducting the same, income for assessing the compensation is taken as Rs.1,35,460/-per annum.

It is not in dispute that the offending vehicle was fully insured with the Insurance company. In view of the above and judgment of Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others SLP(C) 25590 of 2014 decided on 31.10.2017** , the compensation has to be re-assessed as follows:-

Sr.No.	Heads of compensation	Amount
1	Salary per month	Rs.1,35,460/- per annum.
2.	Future prospect (40%)	Rs.1,35,460/- + Rs.54184/-= Rs.1,89,644/-
3.	Deduction (1/3rd)	Rs.1,89,644/- --- Rs.63,215/-= Rs.1,26,429/-
4.	Total loss of dependency after applying the multiplier	Rs.1,26,429/- X 18=Rs.22,75,722/-
5.	Conventional heads	Rs.70,000/-
	Modified amount/total	Rs.23,45,722/-

It is made clear that, vide order dated 13.08.2014, it was ordered that recovery of compensation amount beyond Rs.30,00,000/- shall remain stayed during the pendency of appeal.

Resultantly, the modified amount of compensation of Rs.23,45,722/- shall be payable within a period of forty five days 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 a case of **Shri Nagar Mal and Ors Vs. The Oriental Insurance Company Ltd. And ors. passed in Civil Appeal No.448 of 2018**. Remaining conditions of disbursal of amount shall remain unaltered. With the aforesaid modification in the impugned award, the appeal is allowed to the above extent and cross-objection is dismissed.

(RITU BAHRI)
JUDGE

04.07.2018
anil

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