IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 101 (2) FAO-4973-2015 (O&M)

Date of decision : 22.11.2018

Cholamandalam MS General Insurance Co. Ltd. .... Appellant

VERSUS

Suman Devi and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Vandana Malhotra, Advocate, for the appellant.

Mr. Sudhir Rana, Advocate, for
Mr. Keshav Pratap Singh, Advocate, for respondents No. 1 to 5.

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DEEPAK SIBAL, J. (ORAL)

Through the present appeal preferred by the Insurance Company challenge is made to the award dated 19.02.2015, passed by the Motor Accident Claims Tribunal, Kurukshetra (for short, the Tribunal).

Learned counsel for the appellant submits that the income of the deceased-Baljinder Singh @ Mahinder Singh has been wrongly assessed by the Tribunal @ ₹8100/- per month as according to her the deceased was a daily wager and therefore, only entitled to minimum wages of an unskilled labourer which at the relevant time were ₹5547/- per month; whether the deceased died as a result of the accident in question is also in doubt as the registration number of the vehicle which was involved in the accident was not given in the FIR which was lodged on the same day of the accident; future prospects @ 50% could not have been granted by the Tribunal and that under the conventional heads an excessive amount of ₹5,35,000/- has been granted by the Tribunal.

Through the testimony of PW-2 Sukhdev Singh it was duly proved before the Tribunal that the deceased was working as a mason and that being so assessment of his monthly income @ ₹8100/- cannot be considered to be excessive especially when no contrary evidence was led by the Insurance Company nor any supportive statement could be extracted by them through the cross examination of the aforesaid witness.

So far as the second issue is concerned, a perusal of the FIR shows that the engine number of the tractor which was involved in the accident was duly mentioned in the FIR which was lodged on the same day of the accident. Thus, there is no dispute with regard to the identity of the offending vehicle. Even otherwise, through leading of cogent evidence before the Tribunal the respondents/claimants proved that the deceased had died as a result of the accident caused by the offending vehicle in question.

Learned counsel for the parties are *ad idem* that the award of 50% as “future prospects” on the assessed income of the deceased goes contrary to the dictum of the Hon'ble Supreme Court in “*National Insurance Company Limited vs. Pranay Sethi and others*” (2017) 16 SCC 680, as according to *Pranay Sethi's* case (supra) the deceased being 34 years of age the claimants are entitled to the grant of “future prospects” @ 40% on his assessed income. There is also a consensus that awarding of ₹1 lakh to respondent No. 1 under the head “loss of consortium”, ₹1 lakh each to respondents No. 2 to 5 under the head “loss of love and affection”, ₹25,000/- on account of “funeral expenses” and ₹10,000/- on account of “transportation charges”, totaling to ₹5,35,000/- exceeds the limit of ₹70,000/- for the above heads as granted by the Hon'ble Supreme Court in *Pranay Sethi's* case (supra). It is also not disputed that respondent No. 5-father of the deceased is entitled to ₹40,000/- as “filial consortium” as granted by the Hon'ble Supreme Court in “*Magma General Insurance Co.*

*Ltd. vs. Nanu Ram @ Chuhru Ram and others*", JT 2018(9) SC 195.

In view of the above, the grant of "future prospects" @ 50% by the Tribunal is ordered to be reduced to 40% and ₹5,35,000/- granted under the conventional heads is ordered to be reduced to ₹1,10,000/- which includes ₹40,000/- as "spousal consortium" to the widow of the deceased, ₹15,000/- as "funeral expenses", ₹15,000/- as "loss of estate" and ₹40,000/- as "filial consortium" to respondent No.5-father of the deceased.

The impugned award is modified in the above terms

22.11.2018 [ DEEPAK SIBAL ]
shamsher JUDGE

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