IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Cross Objections No. 163-CII of 2016 in/and
FAO No. 581 of 2015

Date of decision : 04-07-2018

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Bharti Axa General Insurance Co. Ltd.
............Appellant

Versus

Yogesh Kumar and others
...........Respondents

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BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Subhash Goyal, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for cross objector/respondent Nos. 1 to 3

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RITU BAHRI, J.

The appellant-Bharti Axa General Insurance Company Limited (hereinafter referred to as `the Insurance Company') has come up in appeal against the award dated 26.8.2014 passed by the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as `the Tribunal'), whereby compensation of Rs.48,47,600/- has been awarded to the claimants on account of the death of Saroj Sharma wife of Yogesh Kumar, who died in a road accident which took place on 19.6.2013.

On the other hand, cross objectors-respondents no. 1 to 3 (claimants) have filed Cross Objections No. 163-CII of 2016 seeking enhancement of compensation awarded by the Tribunal vide aforesaid award dated 26.8.2014.

Brief facts of the case are that on 19.6.2013, Saroj Sharma was going for morning walk with her family members. At around 5:30 in the morning near Sohana Chwk, Gurgaon, one canter (mini truck) bearing no. HR-55 J-7741 while taking turn on crossing was hit by a speeding truck bearing no. HR-55Q-9448. The said truck was being driven by Sheelsh Kumar (respondent no.1 in the claim petition) at a high speed in a rash and negligent manner and in contravention of the traffic rules. Because of severe impact of the collusion, the canter was dragged by the truck for about 15 to 20 ft and canter during that process ran over both legs of the deceased. Immediately, after the accident the deceased was taken to Artemis Hospital, Gurgaon. Lateron 20.6.2013, the deceased was shifted to Medanta Hospital. Her condition gradually worsened and she passed away on 4.7.2013.

Husband of the deceased, Yogesh Kumar and sons Gaurav Sharma and Bharat Sharma filed claim petition MACT Case No. 28 to claim compensation on account of death of Saroj Sharma in the accident.

After hearing counsel for the parties and going through the evidence produced by the parties, it was proved that the accident had taken place due to rash and negligent driving of Sheelsh Kumar, driver of the offending vehicle. It was also observed by the Tribunal that he did not make any complaint to any authority regarding his false implication by the police. Hence, it was held that the deceased died in the accident which took place due to rash and negligent driving of respondent no.1 of the offending vehicle.

From the oral as well as documentary evidence produced by the claimants, the monthly income of the deceased, who was stated to be running a boutique was taken as Rs.28,750/-. In view of the law laid down in ***Rajesh and others vs. Rajbir Singh and others 2013 (3) RCR (Civil) 170 (SC)***, 30% increase was given towards future prospects. Out of this amount, 1/3rd deduction was made towards personal expenses. The age of the deceased was recorded as 48 years in the postmortem report Ex.P-2. No evidence was produced by the respondents to prove the fact that he age of the deceased was more than 48 years. Thus, it was presumed that he age of the deceased was 48 years at the time of her death. In view of the law laid down in case titled as ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77***, the multiplier of 13 was applied. Compensation was assessed by the Tribunal as under:

Heads	***Amount***
Compensation (Rs. 28750 + 30% of 28750/-=Rs.37375/- less 1/3rd towards personal expenses (Rs.37,375-12458=Rs.24917x12x13= Rs.38,87,052/-	Rs.38,87,052/-
Transportation & funeral expenses	Rs.25,000/-
Loss of love and affection	Rs.1,00,000/-
Medical expenses	Rs.8,35,465/-
TOTAL	Rs.48,47,577.00/-

Aggrieved with the award passed by the Tribunal, Insurance Company has filed appeal before this Court.

Counsel for the Insurance Company has placed on record income tax returns for the years 2011-12 (Ex. P-13), 2012-13 (Ex.-14) and 2013-2014 (Ex.P-15). He has argued that the accident took place on 19.6.2013 and the deceased died on 4.7.2013. The tribunal wrongly relied upon Ex.P-15 i.e ITR for the year 2013-14 and took the annual income of the deceased at Rs.3,45,010/-. The return which was relied upon was filed after the death of the deceased. As per the Insurance Company, for the purposes of assessment of the annual income of the deceased, the earlier two returns should have been taken into consideration.

The cross objection of the claimants is that the Tribunal directed that out of the compensation awarded, Rs.4,00,000 each would be paid in cash to the claimants and daughter of the deceased, namely, Deep Shri and remaining amount of compensation shall be deposited in the name of the claimants and Deep Shri in equal shares in some nationalized bank in the shape of FDR for the period of five years. Since the share in the compensation amount had been equally granted to the daughter of the deceased who was not even a claimant, a cut of ¼ should have been applied towards the personal expenses in stead of a cut of 1/3rd. This argument is liable to be accepted.

The final argument of the counsel for the cross-objectors is that the total payment of medical bill was vide Ex.P-4. The total bill amount cost Rs.12,80,777.52, out of which Vipul Medcorp, third party had paid Rs.4,74,000/- and rest amount of Rs.8,06,777.52 has been paid by the patient. This amount has been wrongly deducted by the Tribunal from the compensation as the claimant had purchased the medi claim policy by paying the premium thereof and therefore the benefit thereof cannot be given to the Insurance Company.

Learned counsel for the cross objector referred to a judgment of this Court in the case of ***Manoj Kumar Yadav Vs. Azad and others 2015 (3) PLR 211,*** where it has been held that deduction of medical expenses paid under the medical policy is not permissible. Under the medical policy, amount was directly paid by Insurance company to the hospital concerned. It was held that the claimant had purchased the medical policy by payment of separate premium and that amount cannot be deducted from the claim awarded under Sections 166 and 158 of the Act. In that case reference was made to a judgment of **Karnataka High Court** in the case of ***Shaheed Ahmed vs. Shankaranarayana Bhat and another, 2008 (5) AIR Kar R 460*** and a judgment of **Kerala High Court** in the case of ***National Insurance Co. Ltd vs. Bijumon 2012 (1) RCR (Civil) 325****, where it has been held that the amount received under medical insurance policy by the claimant cannot be deducted from the compensation amount to be awarded to the claimant.*

On this proposition, counsel for the Insurance Company has referred to a judgment of the High Court of Delhi in the case of ***National Insurance Co. Ltd. VS. Shiela Avinashi and others 2014 ACJ 320*** and a judgment of the High Court of Kerala at Ernakulam in the case of ***National Insurance Co. Ltd. vs. Akber Badsha and others 2016 ACJ 807*** to contend that the claimant would not be entitled to medical expenses in her claim under Motor Vehicles Act which had already been reimbursed to her under medi claim policy. It was held that it would amount amount to double payment as well as unjust and unlawful enrichment.

Heard counsel for the parties and gone through the records of the case. The details of the ITRs show that there has been a consistent increase in the income of the deceased from the year 2012. In the first year, there has been 50% increase. In the second year it has been 70% increase. Since the income graph of Saroj Sharma was in increasing mode, Tribunal has rightly taken into consideration the income tax return for the year 2015 for making the assessment of compensation. On this ground, the appeal of the Insurance Company is liable to be rejected.

In the facts and circumstances of the present case, the judgment cited by the cross objector-claimant in ***Manoj Kumar Yadav's case (supra)*** would be of no help to them. After going through the judgments cited by both the parties, it transpires that in the present case, deduction of Rs.4,70,000/- made which the claimant had received towards medi claim from Vipul Medicorp has been rightly done. Reliance can be placed upon a judgment in **Akber Badsha's case (supra)**, where it has been held that Insurance Company was entitled to set off the amount with respect to the medical bills which were received by the claimant under the medi claim policy. If the claimant keeps the medi claim policy intact than the entire payment of bills has to be reimbursed by the Tribunal but if the claimant chooses to obtain due amount under the medi claim policy than the deduction has to be made to the extent of the premium satisfied under the medi claim policy.

However, in view of the judgment of Hon'ble the Supreme

Court of Indian in the case of **National Insurance Company Ltd. vs. Pranay Sethi and others passed in Spl Leave Petition (Civil) No. 25590 of 2014** decided on **October 31, 2017**, the award is modified as under:

Heads	***Amount***
Compensation (Rs. 28,750+30% of 28750/- =Rs.37375/- less 1/4th deducted towards personal expenses -9344= Rs.28,030 x 12 x13=	Rs. 43,72,680/-
Conventional heads	Rs.70,000/-
Medical expenses	Rs.8,35,465/-
TOTAL	Rs.52,78,145/-
Enhanced amount of compensation	(Rs.52,78,145/-)-(Rs.48,47,577/-) =Rs.4,30,568/-

The enhanced amount of compensation of Rs.4,30,568/- shall be payable within a period of two months from the date of receipt of a certified copy of this order. Then 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 (decided on 19.01.2018). Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

04-07-2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable No