IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.6744 of 2015
Date of Decision:-12.01.2018

Shriram General Insurance Company Limited

...Appellant

Versus

Vishnuli Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Punit Jain, Advocate
for the appellant-Insurance company.

AMIT RAWAL J.(Oral)

The Insurance Company is in appeal against the award rendered by the Motor Accident Claims Tribunal (MACT), Karnal owing to the filing of claim petition by the parents on account of death of their son Basant Ram who unfortunately died in a road accident on 25.9.2013 involving a vehicle bearing Regn. No.HR56-9250 insured with the insurance company. Learned counsel for the appellant submits that the deceased Basant Ram was bachelor, aged 20 years and the MACT had taken his income as Rs.6600/- per month and applied multiplier of 18 and instead of applying deduction ½, the MACT applied 1/3rd . Rs.1,25,000/- was awarded towards loss of love and affection, loss of estate and funeral expenses. In view of the judgment rendered by Hon'ble Supreme Court in

<u>**SLP (Civil) No.25590 of 2014**</u> titled as <u>**"National Insurance Company Ltd. vs. Pranay Sethi and others**</u>" only Rs.30,000/- have been granted under the conventional heads i.e. loss of estate and funeral expenses. He has drawn the attention of this Court to the order dated 05.10.2015 whereby appellant-insurance company was directed to deposit Rs.6,40,000/- within four weeks and payment of remaining amount was stayed. It has been submitted that the amount aforementioned has been deposited by the Insurance Company. This Court vide order dated 30.9.2016 noted that respondents No.1 and 2 have already been served but there is no representation on their behalf.

I have heard learned counsel for the appellant-Insurance Company and appraised the paper book.

The Hon'ble Supreme Court in **National Insurance Company Ltd. vs. Pranay Sethi and others'** (supra) after lot of deleberations has carved out the following formal law which read as under :-

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
>
> > (i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
> >
> > (ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
>
> (v) xxx xxx
>
> (vi) xxx xxx
>
> (vii) xxx xxx
>
> (viii) xxx xxx."

Admittedly, the deceased was a bachelor and the claim petition was filed by the parents. The contention of learned counsel for the appellant is that while applying the multiplier the age of the parents is to be seen and not of the deceased.

I am not in agreement with the submissions of learned counsel for the appellant. However, there is some force in the arguments of learned counsel for the appellant with regard to the application for deduction in a case of bachelor instead of 1/3rd it should be ½ and under conventional heads it should be Rs.30,000/- instead of Rs.1,25,000/- as awarded by the Tribunal. Resultantly, the order of the MACT is modified. Against the amount of Rs.1,25,000/- awarded for loss of love and affection, loss of estate and funeral expenses, compensation under conventional heads shall be to the tune of Rs.30,000/-.

Accordingly, I assess the compensation by taking the income of the deceased as Rs.6600/- per month as has been taken by the Tribunal and provided 40% increase towards future prospects and apply a multiplier of '18', much less, deduction of ½ instead of 1/3rd, to assess the loss of dependency as Rs.9,97,920/-.

As regards the grant of compensation towards conventional heads, the Tribunal has already granted the compensation of Rs.1,25,000/- towards love and affection, loss of estate and funeral expenses, which is on higher side. Accordingly, I hereby reduce the same from Rs.1,25,000/- to Rs.30,000/- towards conventional heads i.e. loss of estate and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014** titled as **"National Insurance Company Ltd. vs. Pranay Sethi and others"** and by exercising the power under Order 41 Rule 33 CPC as per the ratio decidendi culled out by the Hon'ble Supreme Court in **"U.P.S.R.T.C. V/s Km. Mamta and others" (2016) 4 SCC 172**. The claimants shall be entitled to the compensation of Rs.10,27,920/-. The liability shall remain the same as has already been determined by the Tribunal.

However, it is clear that in case the Insurance Company has already deposited the compensation and withdrawn by the claimants, it shall be open to the Insurance Company to recover the excess amount in accordance with law.

With the aforementioned observations, the award rendered by the Tribunal is modified to the aforesaid extent. The appeal stands disposed of.

January 12, 2018 **(AMIT RAWAL)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No