IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215 **XOBJS-159-CII-2015 in/and**
FAO-9995-2014 (O&M)
Date of Decision : 2.8.2018

ICICI Lombard General Insurance Company Ltd. ....Appellant

vs.

Punam Devi and others ....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rajbir Singh, Advocate
for the appellant(s).

Mr. Ashwani Arora, Advocate
for the respondents No.1 to 4/Cross-Objectors.

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AJAY TEWARI, J. (Oral)

CM-27652-CII-2014

For the reasons recorded, the application is allowed. Delay of 39 days in filing the appeal is condoned.

Main Case

This is one appeal and one cross-objection. The appeal is filed by the insurance company and Cross-objections are filed by the claimants.

The brief facts of the case are that on 24.6.21012 the deceased alongwith other labourers was travelling in a Chota Hathi loaded with goods which he had to unload. Accident took place in which he died. The claim petition having been allowed, the insurance company is before this Court.

The first contention of learned counsel for the appellant is that the Tribunal disbelieved the eye witness but accepted the factum of accident and negligence on the basis of an FIR which was registered after 20 days where ultimately the driver was acquitted under Sections 279 and 304-A IPC Consequently, as per learned counsel for the appellant the claim petition should have been dismissed.

Counsel for the claimants on the other hand has argued that merely because FIR was lodged after 20 days or because the driver of the offending vehicle was acquitted under Sections 279 and 304-A IPC could not give rise to inescapable conclusion that the accident had not taken place. Moreover, as per the learned counsel for the claimants, the Tribunal erred in disbelieving the testimony of the eye witness only by holding that neither eye witness accompanied the deceased to the hospital nor he lodged the report with the police.

In my opinion, these two facts are not sufficient to disbelieve the testimony and the same has to be independently evaluated to check whether it is credible or not. Learned counsel have taken me through the testimony of the eye witness and I find that his account is straightforward and nothing has been elicited from him in the cross-examination. I also have my reservation whether mere delay in recording of the FIR or acquittal of the driver can be a determinant to hold that no accident has taken place.

The second argument of learned counsel for the appellant is that the deceased was a gratuitous passenger since he was not the owner of the vehicle or the goods.

Counsel for the claimants points out that in the policy the insurance company-appellant had charged premium for driver, cleaner and 4 labourers and therefore, now they cannot turn around and say that the deceased was a gratuitous passenger because their policy covered such labourers. In the circumstances, the argument that the policy would not cover this is rejected.

Learned counsel for the appellant has argued that under the conventional heads an amount of Rs.1,75,000/- has been awarded which is against the maximum limits of Rs. 70,000/- which has been prescribed in the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009***.

Counsel for the claimant-cross objectors is not in a position to deny this. Therefore, Rs.1,05,000/-has to be reduced. Ordered accordingly.

Counsel for the claimants-cross-objectors asserts that firstly the income was taken on the lower side because on that date as per the Minimum Wages Act, the minimum wages for a unskilled labourer was Rs. 6358/-.

Counsel for the insurance company is not in a position to deny this also but points out that claimants himself admit that the income of deceased was Rs. 6,000/- per month therefore, cannot now be heard to argue that the income was infact more.

Learned counsel for the claimant countered by arguing that there is no inflexible rule, especially in a compensation under beneficial legislation, that the income stated by these illiterate people is the last word when the minimum wages show something different. He has relied upon the judgment of the Supreme Court passed in the matter of ***Minu Rout and another v. Satya Pradyumna Mohapatra and others*** reported as ***2013 (10)***

SCC 695. In that case the widow had claimed the income as Rs.5,000/- per month but the Supreme Court held that since the deceased was a driver his income be taken as Rs. 6,000/- per month.

In the circumstances, I reject the contention that income cannot be taken as Rs. 6348/- per month. Ordered accordingly.

The next argument raised by counsel for the claimants is that in view of the judgment in Pranay Sethi and others' case (supra), 40% had to be added to the income as future prospects. Counsel for the insurance company has accepted this. Consequently, I award 40% future prospects.

The remaining part of the Award relating to the apportionment, management and interest is untouched except that as regards the share of the the cross-objector Nos.1 and 3, 50% of the enhanced amount be released to them while the remaining amount be put in a fixed deposit for a period of two years to be released thereafter.

The appeal and Cross Objections stand disposed of with the abovesaid modifications.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

2.8.2018
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No