IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.M.Nos.26226-27-CII of 2017 in/and
XOBJC No.226-CII of 2017 in/and
FAO NO.7516 of 2016 (O&M)
Date of Order:20.07.2018

Reliance General Insurance Co. Ltd.

..Appellant

Versus

Manjit Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kodan, Advocate,
for the appellant.

Mr. Jasmeet Singh, Advocate,
for respondent nos.1, 4 and 5.

ANIL KSHETARPAL, J(Oral)

C.M.No.26226-CII of 2017

Allowed as prayed for.

C.M.No.26227-CII of 2017

Prayer in this application is for condonation of delay of 256 days in filing the cross-objection.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 256 days in filing the cross objections is condoned.

Application is allowed.

MAIN

Appeal as well as cross objections have come up for final disposal.

Claimants, who are widow, two minor sons and old parents, filed a claim petition on account of death of Harminder Singh, in a motor vehicular accident, which took place on 26.10.2013. Late Sh. Harminder Singh was employed with Punjab Police. He was on the date of accident 40 years and 3 months old.

Learned Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal') after recording a finding that respondent no.1 was guilty of rash and negligent driving, assessed the compensation payable at Rs.49,16,945/-.

Learned counsel for the Insurance Company has submitted that the learned Tribunal has committed an error in overlooking the fact that the deceased was also contributory negligent and therefore, the entire liability could not be fastened on the respondents in the claim petition. He submitted that it was a case of head on collusion between the car and the truck in the middle of the road and, therefore, it must be concluded that both the drivers were equally negligent.

On the other hand, learned counsel for the respondents has submitted that respondent no.1 (in the claim petition) driver of the offending vehicle (Truck) has not been examined. He submitted that in the absence of any evidence, there is no substance in the arguments of learned counsel for the Insurance Company.

This Court has carefully analyzed the submissions made by counsel for the parties.

Driver of the truck, namely, Bodh Raj was the best person who could support the case of the respondent and prove that deceased late Sh. Harminder Singh was also negligent. In these circumstances, this court does not find any substance in the arguments of learned counsel for the

Insurance Company.

With regard to compensation, learned counsel for the Insurance Company has submitted that the learned Tribunal has committed an error in failing to deduct the income tax payable. He has further submitted that on account of conventional head, an amount of Rs.70,000/- at the most could be granted, whereas the learned Tribunal has awarded Rs.1,10,000/-.

On the other hand, learned counsel for the claimants, who has filed cross objections, submitted that the learned court has erred in not awarding any amount on account of increase in the income in the future prospects. He submitted that deceased late Sh. Harminder Singh was in permanent job and therefore, as per the judgment of the Constitution Bench in the case of ***National Insurance Company Limited vs. Pranay Sethi and others, JT 2017 (10) SC 450***, addition of 30% was required to be made on account of future prospects.

In view of the aforesaid, the amount is re-worked as under:-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Monthly Income assessed	Rs.35607/- per month	Rs.35607/- per month
Add Future Prospects 30% Total Income per month	NIL	Rs.35607+10682/-= Rs.46289/- (Rs.46290/- round off)
Annual Income	Rs.35607x12=4,27,284/- --	Rs.46290x12=5,55480/-
Income Tax Rs.2,00,000/- exempted Rs.2,00,000/- to 5,00,000/- @ 10%= 30,000/- Rs.5,00,000/- to 5,55,480 @20%=11,096/- Total Tax= 41,096/-	NIL	Rs.555480-41096=5,14,384/-
(-) 1/4th Deduction	Rs.427284-106821=320463/-	Rs.514384-128596=385788/-
Multiplier =15	Rs.320463x15=48,06,945/-	Rs.385788x15=57,86,820/-

Heads	***Compensation awarded by MACT***	***Compensation awarded by High Court***
Conventional Heads -Loss of estate -Funeral Expenses -Consortium -Loss of love & affection	 NIL Rs.10,000/- Rs.50,000/- Rs.50,000/-	 Rs.15000/- Rs.15000/- Rs.40000/- Total= 70,000/-
	4806945+110000=4916945/-	5786820+70000=5856820/-
Already awarded by Motor Accident Claims Tribunal	Rs.49,16,945/-	Rs.58,56,820/-
Compensation Awarded by the High Court	: Rs.58,56,820-00	
(-)Compensation Awarded by the **MACT**	: Rs.49,16,945-00	
Enhanced Compensation	: Rs. 9,39,875-00	

In view of the above, the FAO No.7516 of 2016 and Cross Objection No.226-CII of 2017 are disposed of accordingly.

The enhanced amount i.e. Rs.9,39,875/- shall carry interest @ 7.5% from the date of filing of the claim petition till its realization.

July 20, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

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