IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7648 of 2016 (O&M)
Date of Decision: 22.01.2018

M/s United India Insurance Co. Ltd. ....Appellant

V/S

Smt. Papita and others ....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr. Rajneesh Malhotra, Advocate and
Ms. Vandana Malhotra, Advocate,
for the appellant.

Mr. Ashish Yadav, Advocate,
for respondent Nos. 1 to 4.

Mr. Ravinder Singh, Advocate,
for respondent Nos. 5 and 6.

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RITU BAHRI, J.(Oral)

CM Nos.25886-CII and 25887-CII of 2016

For the reasons mentioned in the applications, same are allowed and delay of 09 days in refiling and 94 days in filing, respectively, the present appeal are condoned.

Accordingly, both the present applications stands disposed of.

Main Case

The present appeal has been filed by the appellant against the Award dated 08.04.2016 whereby the respondent Nos. 1 to 4 have been awarded compensation of Rs.40,13,835/- along with interest @9% p.a., by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') on account of death of Rajpal in road accident which took place on 26.07.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 26.07.2015, Sh. Mahender Singh son of Sh. Shiv Chand, was coming from village Jadra and going to his house via Pataudi by Vehicle o. H-26-BV-6680. At about 9.30 pm when he reached between Bhora kalan and Uncha Majra on Pataudi-Bilaspur road, a motorcycle No. HR-26AN -1424 was driven ahead of his vehicle on correct left side of the road at a very moderate speed and observing all traffic rules, in the meantime, a truck bearing registration no. PB-07-Y-7525 came from Bilaspur side at a very high speed and in a rash and negligent manner on wrong side of road and hit motorcycle which was going ahead ofSh.Maherndder Singh. Due to accident, motorcycle and driver of motorcycle fell down on the spot and sustained grievous injuries and become unconscious. Thereafter, Sh. Maherndder Singh alongwith other passerby called ambulance and took injured to Rokland Hospital, Manesar, where after checking, declared him brought dead. In this regard FIR No. 293 dated 27.07.2015 under Sections 279, 304-A and 427 of IPC was registered against respondent No. 1 at Police Station Bilaspur, Gurgaon.

Learned counsel for the appellant filed the present appeal challenging the Award of the Tribunal only on main ground that while assessing the income of the deceased-Rajpal by Tribunal, the Income Tax Return verification Form Ex. P-16 for the Assessment Year 2015-16 was taken place which is filed after the date of accident i.e. 26.07.2015 and return was filed on 28.08.2015 and he also argued that deceased Rajpal was not retired from Indian Army and was not getting Rs.12,700/- as pension and besides that he was not running a cloth shop under the name of

Style of Kasturi Cloth House Pataudi.

I have heard learned counsel for the parties and perused the case file.

First to prove employability of deceased Sh.Uday Singh, Clerk, Syndicate Bank, Jamalpur, District Gurgaon, examined as PW2 based on the summoned account statement of account in the name of M/s Kasturi Cloth house, Properietor Raj Pal Singh, Nohata Chowk near Makkar Tent House., Pataudi, District Gurgaon, has proved copy of statement for the period 01.01.2014 to 11.08.2015 as Ex. P2. Ex. P6 is the attested copy of equivalent to Granduation certificate, issued by commanding Officer, Artillery Depot Regiment, Nasik Road Camp, which shows that deceased Rajpal Singh had served in the Indian Army for 15 years from 18.101996 to 31.8.2012. The said documents are not the dispute between the parties, the main dispute is regarding income tax returns Ex. P15 and Ex. P16. .

As per Income tax return verification Form Ex. P15 for the Assessment Year 2014-15, gross total annual income of deceased Rajpal Singh was Rs.3,04,070 and as per Ex. P-16 income of the deceased was Rs.3,99,796. Learned Counsel for the appellant-insurance company argued that in the income Tax verification form Annexure P15 of the year 2014-15 which was filed by Email on 16.09.2014. A perusal of the same shows that the date given in the verification form i.e. 17.09.2014 when it was accepted by Income Tax Department, this is proved in the form itself, should be taken while assessing the Income of the deceased instead of Ex. P16. Learned Counsel for the appellant by referring to Income Tax Return Verification form for the year 2015-16, he has argued that in the form P16 though the date it was filed on 28.08.2015 after the date of accident i..e.

26.07.2015.

A perusal of the form shows that income tax return filed by the deceased via email on 24.07.2015 and it was also proved by the copy of income tax return for the Assessment year 2015-16 itself and on 28.08.2015 the same was accepted by income tax Department. So it is proved from income tax Retrun verification Form for the Assessment year 2015-16 that the return was filed before the death of the deceased i.e. 26.07.2015.

Hence, the findings given by the Tribunal after taking income as per Income Tax Verfication Form Ex. P16 as Rs. 3,99,796/- and after deducting Rs.4413/- as income tax from the said income, his net annual income comes to Rs. 3,95,383/- are on right side.

Learned Counsel for the appellant has further referred the judgment of this court in case titled as ***Anita Singla and others versus Avtar Singh and Others 2006(4) RCR (Civil) 104*** ratio of the said judgment would not be applicable to the facts of the present case and the said income tax return has been filed before the death of the Rajpal and only the claim petition has been filed after his death.

Hence, after going through the findings of the impugned Award, the orders of the learned Tribunal does not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

Dismissed.

January 22nd , 2018 **(RITU BAHRI)**
Riya Grover **JUDGE**

Whether speaking/reasoned Yes
Whether reportable No