**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.919 of 2016 and
Cross-objection No.87-CII of 2016
Date of decision: 28.02.2018**

ICICI Lombard General Insurance Company Limited
….Appellant
Versus

Mohammad Shafik Ahamad and others
….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajneesh Malhotra, Advocate,
for the appellant-Insurance Company.

Mr. Ashwani Arora, Advocate,
for respondent Nos.1 to 4-cross objectors.

Mr. R.K. Bashamboo, Advocate,
for respondent Nos. 5 and 6.

RITU BAHRI J. (Oral)

ICICI Lombard General Insurance Company Limited-appellant has filed this appeal (FAO No.919 of 2016) against the award dated 14.10.2015 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'the Tribunal') whereby compensation of Rs.10,91,500/- has been awarded in favour of the claimants-respondent Nos. 1 to 4 on account of death of Manisha @ Munisha in a motor vehicular accident which took place on 17.01.2015. Respondent No. 1 is husband and respondent Nos. 2 to 4 are children of deceased Manisha @ Munisha.

On the other hand, cross objectors-respondent Nos.1 to 4 (claimants) have filed Cross Objection No.87-CII of 2016 seeking enhancement of compensation awarded by the Tribunal vide aforesaid Award dated 14.10.2015.

FACTS NOT IN DISPUTE

Brief facts of the case are that on 17.01.2015, at about 5.30 P.M., Manisha @ Munisha (since deceased) along with her husband and cousin Usman Ali was working on the side of Siswan road near Bus Stand, Kuarli. In meantime, a truck bearing registration No.PB-07-Q-6181 being driven by Harwinder Singh @ Joga-respondent No.6 (respondent No.2 in claim petition) in a rash and negligent manner, came and ran over Manisha @ Munisha. Both the tyres of truck ran over her stomach, as a result of which, she died on the spot. Driver of the offending vehicle fled away from the place of accident after leaving his truck. With regard to the accident, FIR Ex.P3 was registered against the driver of offending vehicle. Consequently, claimants-respondent Nos. 1 to 4 filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident in question resulting into the death of Manisha @ Munisha had taken place due to the rash and negligent driving of the offending vehicle by its driver-respondent No.6 (respondent No.2 in claim petition) and thus, returned finding on issue No.1 in favour of the claimants. This finding was rightly given on the basis of deposition of Mohammad Shafik Ahamad (PW-1), who was the eye witness of the accident. Claimants have further proved on record copy of postmortem report Ex.P1, copy of death certificateEx.P2, copy of FIR Ex.P3, copy of identify car Ex.P4.

Deceased-Manisha @ Munisha was an employee of Rohan Rajdeep Tollways Ltd., Barodi-respondent No.5 (respondent No.1 in claim petition). As per salary slip Ex.PW-2/D, in the month of December, 2014, she had received salary of Rs.7750/-. Accordingly, income of the deceased was taken as Rs.7750/- per month i.e. Rs.93,000/- per annum. Out of this income, 1/4thamount was deducted towards her personal expenses. The dependency of claimants, thus, came to Rs.69,750/- per annum. The deceased was 54 years of age at the time of accident/death and the multiplier of 14 was applied. Thus, the claimants were found entitled to compensation of Rs.9,76,500/- (69,750 x 14). In addition to it, Rs.1,00,000/- were awarded towards loss of consortium to claimant No.1, Rs.10,000/- towards funeral expenses and Rs.5000/- towards transportation. Hence, the claimants (respondent Nos.1 to 4) were found entitled to a total compensation of Rs.10,91,500/-. Feeling dissatisfied with the impugned award, the Insurance Company-appellant has preferred the present appeal.

During the pendency of appeal, claimants-respondent Nos. 1 to 4 have filed Cross Objection No.No.87-CII of 2016 seeking enhancement of compensation awarded by the Tribunal.

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

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The Insurance Company is not disputing the finding given by Tribunal on issue No.1 that the accident had been caused on account of rash and negligent driving of the offending vehicle by its driver, which resulted into the death of Manisha @ Munisha. The impugned award has been challenged on the ground that the deceased was 54 years of age at the time of death/accident, therefore, multiplier of 11 should have been applied in this case, whereas, the Tribunal has wrongly applied the multiplier of 14. The second ground taken is that claimant No.2-Mohammad Salim was 28 years old and was major, therefore, he could not be held dependent upon the deceased. Hence, a cut of 1/3rd should have been applied on the income of deceased.

The arguments raised by learned counsel for the appellant (insurance company) are accepted and the impugned award is liable to be modified accordingly. Accordingly, claimant No.2-Mohammad Salim (respondent No.2 herein) is not held entitled to get any compensation on account of the death of his mother, as he was major and was not dependent upon her.

Learned counsel for claimants-respondent Nos.1 to 4, while referring to the judgments passed in ***Lata Wadhwa vs. State of Bihar,*** 2001 (3) ACJ 1735 and ***United India Insurance Company vs. Sube Singh,*** FAO No.218 of 2014 (decided on 15.01.2014) contends that where the woman is working, at the time of calculating compensation, her salary plus contribution as house wife have to be taken together.

In the light of the above arguments and the law laid down in ***Lata Wadhwa*** and ***Sube Singh's*** cases (supra), to meet the ends of justice, the compensation is hereby reassessed**,** as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income plus contribution as housewife	Rs.7750/- + Rs. 6500 = Rs.14,250 per month

(ii)	10% of (i) above to be added as future prospects	14,250 + 1425 = Rs.15,675/-
(iii)	1/3rd of (ii) above is deducted as personal expenses of the deceased	15,675 – 5225 = Rs.10,450/-
(iv)	Compensation after multiplier of 11 is applied	Rs.10,450/- x 12 x 11 = Rs.13,79,400/-
(v)	Compensation under conventional head	Rs.70,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs.14,49,400/-**
(vii)	**Enhanced amount of compensation**	**Rs.14,49,400 – 10,91,500 = Rs.3,57,900/-**

The enhanced amount of compensation of **Rs.3,57,900/-** shall be payable within a period of two months to claimant Nos.1,3 and 4 from the date of receipt of certified copy of this order. The 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 (arising out of SLP (C) No.26853 of 2016) decided on 19.01.2018." Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent. Appeal filed by insurance company and cross-objection filed by claimants-respondent Nos.1 to 4 stand partly allowed accordingly.

(RITU BAHRI)
JUDGE

28.02.2018
ajp

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