IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.3225 of 2017 (O&M)
Decided on:-March 26, 2018.

Bajaj Allianz General Insurance Company Limited.
………Appellant.

Versus

Mukhtiar Singh and others
………Respondents.

__CORAM__: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

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

Mr. Anil Kumar Sephia, Advocate
for respondents No.1 and 2.

Mr. Tarun Singla, Advocate
for respondents No.3 and 4.

__HARI PAL VERMA, J. (Oral)__

The appellant-insurance company has filed the present appeal impugning the award dated 30.01.2017 passed by learned Motor Accidents Claims Tribunal, Jalandhar (for short, the Tribunal), whereby on a claim petition filed by the respondents No.1 and 2-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal had awarded total compensation of Rs.11,73,600/- along with interest @ 7.5% per annum from the date of filing of the petition till realization of the amount on account of the death of Mohinder Singh, who died in a motor vehicular accident which took place on 03.12.2015.

As per the claim petition, on 03.12.2015, deceased Mohinder Singh along with his wife Tarsem Kaur was going to his house on Activa scooter bearing registration No.PB-08-BQ-8763. At about 01.30 p.m., when they reached in the area of Police Station Mehtiana, a vehicle bearing registration No.PB-08-CP-2003 driven by its driver in a rash and negligent manner struck against the Activa scooter. On account of this impact, Mohinder Singh and his wife Tarsem Kaur fell down on the metalled road and suffered serious injuries and both of them died on the spot.

As per the version of claimants, deceased Mohinder Singh was about 69 years of age and had retired from the Indian Army. He was getting pension of Rs.27,000/- per month. Besides this, he was also running a Karyana shop with his son and was earning Rs.9,000/- per month from this business.

On the basis of statement of bank account as Ex.AW3/A of deceased Mohinder Singh, the Tribunal assessed the income of deceased as Rs.26,215/- per month. The Tribunal further held that there was no evidence that deceased Mohinder Singh was running any Karyana shop. By deducting 1/3rd income as own expenses of the deceased, the Tribunal assessed the dependency of claimants as Rs.17,476/- per month and Rs.2,09,720/- per annum. Since the deceased was about 69 years of age at the time of his accidental death, a multiplier of '5' was applied by the Tribunal and the total dependency of the claimants was assessed as Rs.10,48,600/- (209720 x 5).

Apart from the above compensation, the Tribunal has also awarded Rs.1,25,000/- under the conventional heads i.e. Rs.1,00,000/- for loss of love and affection and Rs.25,000/- towards funeral expenses. Thus, a total compensation of Rs.11,73,600/- was awarded by the Tribunal vide award dated 30.01.2017.

Aggrieved against the impugned award dated 30.01.2017, the insurance company has filed the present appeal.

Learned counsel for the appellant-insurance company has argued that the award passed by the Tribunal is contrary to law. In the present case, the claimants have failed to prove the element of negligence, which is a crucial issue. Deceased Mohinder Singh was 69 years of age and the claimants are his two major sons, namely, Mukhtiar Singh, aged 47 years and Davinder Singh, aged 42 years. Therefore, the Tribunal was required to make 50% deduction instead of 1/3rd deduction. He has relied upon the judgment of Hon'ble Supreme Court in ***Special Leave Petition(C) No.13931 of 2017*** titled as ***New India Assurance Company Limited Versus Vinish Jain and others*** decided on 23.02.2018, wherein the deceased was 78 years of age and the claimants were two major sons and two grand-daughters. Since the major sons had their own source of income, the Apex Court held that they were not dependents upon the deceased and, therefore, made 50% deduction in the income of the deceased.

He has further argued that the Tribunal has also committed a legal error by awarding Rs.1,25,000/- under the conventional heads. In view of the law laid down by Hon'ble Supreme Court in ***National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009***, the claimants are entitled to Rs.30,000/- only under the conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- for funeral expenses.

On the other hand, learned counsel for the respondent-claimants has argued that the award passed by the Tribunal is well-reasoned. Since

Mohinder Singh had died in the accident because of the negligence on the part of the driver of offending vehicle, the Tribunal has rightly passed the award.

I have heard learned counsel for the parties.

Record reveals that regarding the aforesaid accident, a DDR was recorded by the police. Further, the driver of offending vehicle i.e. Pavitar Singh (respondent No.3 herein) while appearing in the witness box as RW1 has admitted the factum of accident. Though he has deposed that the accident was caused due to the negligence of deceased Mohinder Singh, but interestingly, he has not lodged any report to the police to the effect that the negligence was on the part of deceased Mohinder Singh. Accordingly, the Tribunal has rightly recorded a finding of fact that the accident was caused due to rash and negligent driving of the offending vehicle by respondent Pavitar Singh. Therefore, the plea of learned counsel for the appellant-insurance company that the claimants have failed to prove the element of negligence on the part of respondent Pavitar Singh, cannot be accepted.

Since deceased Mohinder Singh was about 69 years of age at the time of his accidental death, the multiplier of '5' has rightly been applied by the Tribunal. However, as regards $1/3^{rd}$ deduction applied by the Tribunal, this Court finds support from the observations made by Hon'ble Supreme Court in ***Vinish Jain and others' case (supra)***, wherein 50% deduction was ordered to be applied. Relevant paragraph Nos.7 and 8 of the said judgment are reproduced as under:

> *"7. This case relates to death of one A.P. Jain. He was 78 years of age. At the time of death, his annual income was assessed at Rs.3,64,500/-. The deduction made for personal*

expenses at 1/3 is very low keeping in view the fact that the claimants are his two major sons and two grand-daughters. The major sons have their own source of income and were not dependent on the deceased and the two grand-daughters are primarily dependent on their father and not on their grandfather. We are also of the view that the High Court has erred in granting Rs.50,000/- as loss of love and affection to each of the claimants. The total compensation granted is Rs.14,39,980/- along with interest at the rate of 7.5% per annum.

8. We feel that 50% deduction is called for and if this factor is taken into consideration then the loss of dependency is Rs.1,82,250/- and if multiplier of 5 is used, the compensation works out to Rs.9,11,250/-. In addition, the claimants would be entitled to Rs.70,000/- for love and affection and funeral expenses etc. As per the judgment of this Court passed in the case of ***Pranay Sethi (supra)****. Accordingly, the amount of compensation is reduced to Rs.9,81,250/- along with interest awarded by the Tribunal.*"

In the present case, the claimants are two major sons of deceased Mohinder Singh and they were not dependent upon the deceased. Therefore, this Court finds that 50% deduction is required to be applied. Similarly, in view of the law laid down in ***Pranay Sethi's case (supra)***, the claimants are entitled to Rs.30,000/- only under the conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- for funeral expenses.

Accordingly, the impugned award passed by the Tribunal needs modification and the amount of compensation awarded by the Tribunal is re-assessed in the following tabulated form:

Monthly income of deceased.		Rs.26,215/-

Annual income.	(26215 x 12)	Rs.3,14,580/-
Deduction towards personal expenses of deceased.	(50% of annual income)	Rs.1,57,290/-
Annual dependency of the claimants.	(314580 – 157290)	Rs.1,57,290/-
Multiplier.	(as per age of the deceased)	'5'
Total loss of dependency.	(157290 x 5)	Rs.7,86,450/-
Conventional heads.	Loss of estate	Rs.15,000/-
	Funeral expenses	Rs.15,000/-
Total amount of compensation.	(786450+15000+15000)	Rs.8,16,450/-
Amount already awarded by the Tribunal.		Rs.11,73,600/-
Reduction.	(1173600 – 816450)	Rs.3,57,150/-

Accordingly, the present appeal is disposed of and the impugned award dated 30.01.2017 passed by the Tribunal is modified to the aforesaid extent. Consequently, the respondent-claimants are awarded total amount of compensation of Rs.8,16,450/- (Rupees eight lakhs, sixteen thousand, four hundred and fifty) along with interest @ 7.5% from the date of filing of the claim petition till its realization.

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

(HARI PAL VERMA)
JUDGE

March 26, 2018
Yag Dutt

Whether speaking/reasoned: Yes
Whether Reportable: No