IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.143 of 2018 (O&M)
Date of decision : 16.01.2018

United India Insurance Company Ltd.

...Appellant

Versus

Jagjiwan Singh @ Jiwan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lalit Garg, Advocate for the appellant.

****

ANIL KSHETARPAL, J.

The Insurance Company is in appeal against the award passed by the Motor Accident Claims Tribunal dated 03.10.2017 allowing the claim petition, awarding compensation to the tune of ₹9,17,000/- alongwith 7% p.a. interest on account of death of Jarnail Singh @ Jella, aged about 55 years, in a motor accident.

Learned Motor Accident Claims Tribunal has after appreciation of the evidence available on the file recorded a finding that Kuldeep Singh @ Soni, driver of the offending vehicle was rash and negligent in driving the offending vehicle which resulted into the accident. The Tribunal has further found that the deceased Jarnail Singh @ Jella was used to repair the water pumps for earning his livelihood.

However, no record of his income has come on record. Hence, the Tribunal assessed the income of the deceased as a skilled worker at ₹8,000/- per month. 1/4th was deducted towards personal expenses.

I have heard the learned counsel for the Insurance Company at length. He has submitted that the income assessed by the Tribunal was on the higher side. He has submitted that the Motor Accident Claims Tribunal, in absence of any positive evidence was required to take the minimum wages payable to the unskilled labour and thus, the Tribunal erred in assessing the income at ₹8,000/- per month.

He has further submitted that the Tribunal has committed an error in deducting only 1/4th of the income towards personal expenses, although, it should be 1/3rd. He has further submitted that the learned Tribunal has taken the age of the deceased as 55 simply on the basis of the Post Mortem Report, although from the Identity Card issued by the Election Commission, the age comes to 60. He has further submitted that under the conventional head, the Tribunal has awarded ₹1,25,000/- which as per the judgment of the Constitution Bench in *National Insurance Company Limited Vs. Pranay Sethi and others, SLP (Civil) No.25590 of 2014, decided on 31.10.2017*, can only be ₹70,000/-.

Learned counsel has further submitted that the Tribunal has further committed an error in relying upon the driving licence issued by the State of Punjab particularly when the driver initially had claimed that the driving licence in his favour was issued by the Regional Transport Office, Mumbai which on being verified was found fake.

In the considered opinion of this Court, the submissions made by the learned counsel for the appellant have no substance. One of the claimant had appeared in the witness-box as CW1. Bahadur Singh has also been examined as CW3. Both the witnesses have claimed that the deceased was working as Plumber earning ₹25,000/-. The Tribunal while considering the evidence recorded a finding that there is no proof of earning. However, the Tribunal held that the deceased was skilled worker. The Tribunal thus assessed the income at ₹8,000/- per month. In State of Punjab, even unskilled worker earns this much. The Tribunal has only assessed the income at ₹8,000/- per month for skilled workman. The accident took place on 06.02.2016.

Second submission of the learned counsel is that the Tribunal has wrongly applied deduction of 1/4th of income from personal expenses. He submits that since the deceased had left behind three sons and a married daughter, therefore, excluding the married daughter who was not dependent upon the deceased, a cut of 1/3rd should have been applied. Even as per the argument of the learned counsel, there were total four family members excluding the married daughter. Thus, the learned Tribunal correctly applied a cut of 1/4th towards personal expenses.

Next submission of the learned counsel is that the age of the deceased has been wrongly taken as 55 years. It is not in dispute that in the Post Mortem Report, the age of the deceased was 55 years. The claimants had also claimed that the age of the deceased was 55 years. Learned counsel for the appellant has placed reliance on the Identity Card issued by the Election Commission of India Ex.C5. This Identity Card does not give any date of birth. However, it only records that as on 01.01.1995, the age of Jarnail Singh @ Jella was 40 years. In the considered opinion of this Court, this Identity Card cannot be used to arrive at a finding that Jarnail Singh was about 60 years on the date of accident particularly when other evidence is available. The Identity Card issued by the Election Commission cannot be taken as evidence of age. No evidence has been produced by the Insurance Company, either to prove the form filled for preparation of the election card or such information was supplied by Lt. Sh. Jarnail Singh or anybody else. In the present case, Post Mortem Report as well as the case of the claimants is unison with regard to the age of the deceased at 55 years. The Tribunal has not committed any error in taking the same to be correct.

Next argument of the learned counsel is that under the conventional head, ₹1,25,000/- has been made payable which is not permitted as per the judgment of the Constitution Bench in Pranay Sethi's case. This Tribunal has carefully considered the submission. There is some substance in the argument of the learned counsel, however that itself would not be sufficient to entertain the appeal. In the present case, nothing has been awarded towards future prospects. The deceased was a skilled worker. His income was bound to increase with the passage of time and on account of inflation. In view thereof, the excess amount awarded under the conventional head can very well be adjusted towards the future prospectus.

Last submission of the learned counsel is that with respect to the validity of driving licence. It is not in dispute that the Verification Report Ex.R9 allegedly received from the Regional Transport Office, Mumbai has not been proved. Still further, respondent No.1 is found to be in possession of another driving licence Ex.R11 issued by the State of Punjab valid from 16.05.2007 to 15.05.2027. Insurance Company has not taken any steps to prove that the licence issued by the State of Punjab was invalid.

In view thereof, there is no scope for interference in the present appeal. Hence, the appeal is dismissed.

16.01.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**