IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-4667-2017 (O&M)
Date of Decision: 18.09.2018

New India Assurance Co. Ltd. --Appellant

Versus

Smt. Raj Kumari & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vinod Gupta, Advocate for the appellant.

Mr. Deepak Grover, Advocate for
Mr. Inderjit Sharma, Advocate for
respondents no.1, 2 & 4.

***

TEJINDER SINGH DHINDSA.J (Oral)

The instant appeal has been filed by the appellant-Insurance Company assailing the award dated 12.4.2017 passed by the M.A.C.T, Gurugram and in terms of which the compensation amount of Rs.16,95,000/- along with interest @ 9% per annum from the date of filing of the claim petition till actual realization has been awarded in favour of claimant no.1 Smt. Raj Kumari on account of death of her son Vicky in a motor vehicle accident that took place on the intervening night of 20/21.10.2013.

Counsel representing the appellant-Insurance Company has confined the scope of the instant appeal only with regard to quantum of compensation.

Counsel for the appellant has argued that the monthly income of the deceased assessed by the Tribunal as Rs.10,000/- per month is without any basis and is on the higher side. Second submission raised is that even under the conventional heads Rs.75,000/- has been awarded i.e. Rs.25,000/- towards funeral expenses and Rs.50,000/- on account of love and affection and such amount awarded cannot sustain. Yet another contention raised by counsel is that the additional income towards future prospects at 50% is contrary to the parameters laid down by the Supreme Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017(4) R.C.R (Civil), 1009.***

Per contra, counsel representing the claimants/respondents contends that the compensation amount awarded by the Tribunal is based on cogent and valid reasoning and based upon due appreciation of evidence and does not call for any interference.

Counsel for the parties have been heard at length and the case paper book has been perused.

Brief facts are that a claim petition had been filed under Section 166 of the Motor Vehicle Act, 1988 claiming compensation to the tune of Rs.60 lacs on account of death of Vicky in a motor vehicle accident that took place on the intervening night of 20/21.10.2013. Claimants had asserted that Vicky (since deceased) was proceeding on a motorcycle and was struck by a canter vehicle bearing registration no. MH-04-DK-8064 and which was being driven in a rash and negligent driving by Mahender Singh, driver. Claimants were grandmother, parents as also sister of the deceased.

As regards Issue No.1 relating to rash and negligent driving of the offending/insured vehicle, findings were returned in favour of the claimants and it was held that the death of Vicky had taken place on account of injuries suffered in the accident that took place involving vehicle no. MH-04-DK-8064 and which was being driven in a rash and negligent manner by Mahender Singh driver.

In so far as quantum of compensation is concerned, claimants had asserted that the deceased was working as a driver in M/s Energetic Engineering Service and was drawing a salary of Rs.13,000/- per month. It had also been pleaded that the deceased was earning an additional amount of Rs.7,000/- per month by selling milk on a part time basis. In support of such contention the claimants had examined Harinder Singh as PW-1 and who had deposed that he is running the firms M/s Energetic Engineering Service and M/s Hitech Engineering Service and had employed the deceased as his personal driver at a salary of Rs.13,000/- per month. Tribunal, however, has disbelieved testimony of PW-3 on the basis that no documentary evidence had been brought forth as regards payment of such salary. Tribunal by way of approximation and guess work has assessed the monthly income to be Rs.10,000/- per month.

This Court finds sufficient merit in the contention raised by counsel representing the appellant-Insurance Company that under the facts and circumstances of the case the Tribunal should have been guided by the minimum wages that were admissible even to a skilled worker by accepting the deceased to be a driver at the relevant point of time i.e. the date of accident 20/21.10.2013. It has gone uncontroverted that as on the date of accident, the minimum wages admissible to a skilled worker were approximately Rs.7,000/- per month.

To balance out the equities, this Court assesses the monthly income of the deceased to be Rs.8,000/- per month as on the date of the accident.

The Tribunal has accepted the age of the deceased to be 21 years on the basis of the date of birth recorded in the Driving License

Ex. P-5. The same is accepted.

Since the deceased even as per case set up on behalf of the claimants was not on a permanent job and keeping in view the age of the deceased to be 21 years, an addition in come towards future prospects at 40% is awarded as per dictum laid down by the Supreme Court in ***Pranay Sethi***'s case (supra).

Deceased was concededly a bachelor. Tribunal has rightfully taken a view that grandmother, father and sister would not be seen as dependents upon the deceased. Only mother/claimant no.1 Smt. Raj Kumari was held to be dependent so as to claim compensation. Tribunal has correctly made a deduction of 50% towards personal and living expenses of the deceased. Even the multiplier of 18 has rightfully been applied to the multiplicand.

In so far as conventional heads are concerned, claimant i.e. mother of the deceased is held to be entitled to Rs.15,000/- towards funeral expenses and a like amount of Rs.15,000/- towards loss of estate.

In view of the above, the instant appeal is partly allowed and the compensation amount is reassessed and calculated as follows:-

Sr. No.	Head	Calculation
1.	Income	8,000/- per month
2.	40% increase in income towards future prospects	8,000+40%=11,200/-
3.	50% deductions towards personal expenses of the deceased.	11,200 ÷ 2 = 5,600/- 11,200-5,600 = 5,600/-
4.	Compensation after applying multiplier of 18	5,600x12 = 67,200/- 67,200x18 = 12,09,600/-
5.	Conventional heads (Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate.	30,000/-
6.	Total	Rs.12,39,600/-

The afore-calculated/reassessed compensation amount be released in favour of mother of the deceased i.e. claimant no.1 forthwith.

Appeal is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

18.09.2018
lucky

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No