IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2400 of 2018 (O&M)
Date of Decision: May 03, 2018

L&T General Insurance Company ...Appellant

Versus

Mahender Singh and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Ashwani Talwar, Advocate
for the appellant – Insurance Company.

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HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 20.01.2018 of the Motor Accident Claims Tribunal, Gurugram (for short 'the Tribunal').

The appellant – insurer has also filed an application (CM-8889-CII-2018) under Order 41 Rule 27 read with Section 151 CPC for production of additional evidence by producing a copy of the Aadhar Card of the deceased, which states that the date of birth of the deceased was 01.01.1966 and accordingly the deceased was 51 years on the date of the accident.

Order 41 Rule 27 reads as follows:

"27. Production of additional evidence in Appellate Court. –
(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if
(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
(aa) the party seeking to produce additional evidence, establishes that

notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

In the instant case, the document sought to be produced by way of additional evidence is the Aadhar Card of deceased Kanta. It is well-settled that additional evidence in Appellate Court is permissible if any of the three conditions, quoted above, is fulfilled. For the production of a copy of Aadhar card, it is not acceptable that the appellant Insurance company had exercised due diligence and despite that such evidence could not be produced by it at the time when the decree appealed against was passed. Hence, the application is dismissed.

Brief facts as disclosed in the claim petition are that on 04.01.2017 at about 12.30 pm in the area of Om Shanti Retreat Centre, Bhora Kalan, a vehicular accident took place involving Maruti Car No.HR-26M-4481 (herein for short 'the offending vehicle'), wherein, Kanta lost her life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The Tribunal assessed the contribution of deceased Kanta in doing household works and cost of the services rendered by her towards the claimants' family was assessed at Rs.5,000/- per month treating her to be a home-maker, multiplier of 13 was applied (taking the age of the deceased between 46-50 years. As per post mortem report the age of the deceased was 50 years.). The loss of dependency was assessed at Rs.7,80,000/-. Besides, sum of Rs.40,000/- towards 'loss of consortium', Rs.15,000/-, each for 'funeral expenses' and 'loss of estate' were awarded. That apart, the claimants children were awarded Rs.1,00,000/- towards 'loss of love and affection'. The Tribunal also awarded medical expenses to the tune of Rs.31,497/-. In all, compensation of Rs.9,81,500/- (*rounded off*) along with interest was awarded.

Ld. Counsel for the appellant – insurer has argued that the Tribunal erred in awarding Rs.1,00,000/- under the head of 'loss of love and affection' to the claimants. He has relied on the decision of the Hon'ble Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680**.

The submission has merit. In the aforesaid case, Hon'ble the Supreme Court has restricted the conventional heads to 'loss of consortium', 'loss of estate' and 'funeral expenses' . The same have already been awarded by the Tribunal. Hence the compensation of Rs.1,00,000/- awarded under the head of 'loss of love and affection' could not have been awarded.

Hence, the appeal is partly allowed. The Award of the Tribunal is modified to the extent that the appellant is held entitled to total compensation of Rs.8,81,500/-, (981500-100000) that is, Rs.1,00,000/- less than the amount awarded by the Tribunal.

This appeal has been disposed of without issuing notice to the respondent-claimants in order to avoid unnecessary delay and expense. A copy of this order be conveyed to the claimants-respondents 1 to 5. In the event of the said respondents having any objection, they may file an application to that effect. On receipt of any such application, the same be listed for hearing.

It is made clear that this order has been passed on an appeal filed by the Insurance Company without hearing the claimants and is confined to the contentions raised herein. It is without prejudice to the rights of the claimants to separately agitate for enhancement on any ground that may be available to them.

May 03, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No