IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2849 of 2018 (O&M)
Date of Decision:May 25, 2018

The Oriental Insurance Company Limited ---Appellant
Versus
Krishna Devi and others ---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.R.C. Gupta, Advocate for the appellant-insurer.

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HARINDER SINGH SIDHU, J.

The Oriental Insurance Company Limited has filed the present appeal challenging the award dated 26.2.2018 passed by the Motor Accident Claims Tribunal, Narnaul (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 15.6.2017 in the area of Village Adalpur a vehicular accident took place involving Bolero Jeep No.HR66A-1563 (herein for short 'the offending vehicle'), wherein, Kuldeep lost his 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.

On a claim petition having been filed by the legal representatives of Kuldeep, the Tribunal assessed the income of the deceased at Rs.8,000/- per month, granted addition of 40% towards future prospects, deducted ½ towards his personal expenses, applied the multiplier of 18 (deceased aged 23 years). The loss of dependency was assessed at Rs.12,09,600/- (5600x12x18). Amount of Rs.15,000/-, each towards 'funeral expenses' and 'loss of estate' was also awarded. In all, compensation of Rs.12,39,600/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has argued that there was no independent witness to prove that the accident was the result of rash and negligent driving of the offending vehicle, hence, the finding of the Tribunal on the issue of negligence is not sustaintable. He also argued that the deceased was a student and the Tribunal had assessed his notional income, whereupon, no increase towards future prospects could be awarded. It is further argued that the Tribunal ought to have applied the multiplier according to the age of the claimant – mother of the deceased.

Having heard Ld. Counsel for the appellant, in my view none of the above submissions merits acceptance to lead to a different conclusion than that recorded by the Tribunal. In the FIR recorded at the instance of an eye witness Anil Kumar, it was specifically alleged that the accident occurred due to rash and negligent driving of the offending Jeep. The matter was investigated by the Police, upon which, it filed charge-sheet under Section 173 Cr.P.C. against the petitioner. The eye witness Anil Kumar was also examined before the Tribunal as PW2, who stood by his version that the accident was the result of rash and negligent driving of the offending jeep.

It is well-settled that requirement of proof in a MACT case is not as stringent as in a criminal case.

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006,** decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

"xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle"

Thus, there is no ground to interfere with the finding of the Tribunal that the accident was caused due to rash and negligent driving of the offending vehicle.

The deceased was about 23 years old at the time of the accident. It was pleaded by the claimants before the Tribunal that he was a student of B.A.IInd year. He was an ITI Diploma holder and used to earn Rs.20,000/- per month by doing tuition and agricultural work. He was also stated to be engaged in dairy farming. But since the claimants failed to produce any documentary proof regarding his income or the ITI Diploma, the Tribunal assessed the monthly income of the deceased at Rs.8000/- per month. It appears that the Tribunal has assessed the same by making a guess work considering the level of economy in the year 2017. The assessment also cannot be said to be on higher side as the deceased was a 23 years old able bodied person. Thus, the Tribunal has rightly granted the increase of 40% towards future prospects in the light of the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680.**

So far as the contention that the Tribunal while assessing compensation ought to have applied the multiplier according to the age of the claimants – parents, is concerned, the law is settled by the Hon'ble Supreme Court in various cases, including in **Amit Bhanu Shali & others Vs. National Insurance Co. Ltd. And others, 2012(4) RCR(Civil) 343** that for determination of multiplier, age of the deceased is to be considered and not the dependents. Hence, the argument raised is devoid of merit.

No other point was raised.

Appeal dismissed.

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 25, 2018 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No