IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3929 of 2018 (O&M)
Date of decision : September 20, 2018

United India Insurance Company Limited .....Appellant

Versus

Dimple and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Sanya Sapra, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No. 1 to 3.

Mr. Anil Kumar Sharma, Advocate
for respondent No. 5.

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LISA GILL, J.

Present appeal has been filed by United India Insurance Company Limited challenging award dated 03.02.2018 passed by the learned Motor Accident Claims Tribunal, Ropar (hereinafter referred to as the 'Tribunal').

Learned counsel for the appellant submits that service upon respondent No. 4 who is the driver of the offending vehicle be dispensed with as no relief is claimed qua him.

Ordered accordingly.

Brief facts necessary for adjudication of the case are that on 15.09.2009, Sanjiv Kumar (since deceased) alongwith Rajinderpal was coming back from his factory to their home on a scooter bearing registration No. CH-03Q-7306 at a very slow speed while driving on the left side of the road. Sanjiv Kumar was riding pillion. When they reached near village Kishanpura gate (Baddi), a Tanker bearing registration No. HP-34-B-5252 driven in a rash and negligent manner by respondent No. 4 hit the scooter from behind. Both Sanjiv Kumar and Rajinderpal fell on the road and rear tyre of the tanker crushed the head of Sanjiv Kumar. Sanjiv Kumar died at the spot.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 15.09.2009 due to rash and negligent driving of the offending Tanker bearing registration No. HP-34-B-5252 by respondent No. 4. Learned Tribunal awarded a sum of ₹43,85,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹3,90,000/- per annum. Deduction of 1/3rd was effected, keeping in view the number of dependants. Multiplier of 16 was applied as the deceased was 34 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of of ₹1,00,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses.

Notice of motion in this case was primarily issued on the contention raised by the learned counsel for the insurance company that no deduction in respect to the income tax has been effected by the learned Tribunal.

I have heard learned counsel for the parties.

Keeping in view the judgments of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009** as well as **Magma General Insurance**

Company Limited versus Nanu Ram Alias Chuhru Ram and others (Civil Appeal No. 9581 of 2018), learned counsel for the appellant is unable to deny that, in case, deduction on account of the income tax is effected and at the same time an increase in income on account of future prospects as well as compensation under the various conventional heads as awarded by the Hon'ble Supreme Court in the above said two judgments is afforded, the claimants may be entitled to higher compensation.

Learned counsel for the respondent – claimants urges that the compensation awarded to the claimants be enhanced even though no separate appeal has been filed by the claimants nor any cross objections preferred with reference to Order 41 Rule 33 CPC. However, in my considered view, this Court cannot increase compensation in the appeal filed by the insurance company seeking reduction of the compensation. In this regard, reference can gainfully be made to the Hon'ble Supreme Court in ***Ranjana Prakash and others versus Divisional Manager and another 2011(14) SCC 639*** while discussing the scope of Order 41 Rule 33 CPC, it is specifically observed by the Hon'ble Supreme Court as under:-

> " Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by

owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation."

Keeping in the view the facts and circumstances of the case, this appeal filed by the insurance company is dismissed.

(Lisa Gill)
Judge

September 20, 2018
rts

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No