IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.7381 of 2018(O&M)
Date of Decision:19.12.2018

Future Generali India Insurance Company Ltd.

.................APPELLANT

Vs.

Anita Rani and others

.................RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DR. RAVI RANJAN

Present: Mr.Rajesh K. Sharma, Advocate for the appellant.

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DR. RAVI RANJAN, J.(Oral)

CM No.26917-CII-2018

This is an application filed under Section 5 of the Limitation Act for condonation of delay of about 04 days in preferring the present appeal.

Having regards to the statement made in the application, this Court is of the opinion that the applicant-appellant was prevented by sufficient cause from filing this appeal within time.

As a result, this application is allowed and delay of 04 days in preferring the appeal is hereby condoned.

FAO No.7381 of 2018(O&M)

I have heard learned counsel for the appellant and perused the records of this case.

This appeal filed by the appellant-Insurance Company is directed against the judgment and award dated 18.07.2018 passed in MACT Case No.MACP-445 of 2016 by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for brevity "the Tribunal").

The claim petition was filed before the Tribunal under Section 166 of the Motor Vehicles Act, 1988 (for brevity "the Act") by claimant/respondent No.1-Anita Rani, who is the mother of the deceased-Chanderveer @ Hunny for grant of compensation on account of death of her son Chanderveer @ Hunny in a motor vehicular accident.

Short facts which would be necessary for consideration of the *lis*, stand enumerated as under:-

The claimant/respondent No.1-Anita Rani, by filing the claim petition before the Tribunal sought compensation on account of death of her son Chanderveer @ Hunny in a motor vehicular accident which according to her happened on 25.11.2016 at about 7.30 P.M. On the fateful day i.e. on 25.11.2016, Chanderveer @ Hunny (since deceased), in the company of Sunil Kumar and Manoj Kumar was on the way to village Dhaurang. They were riding on two motorcycles. One motor cycle bearing bearing No.HR-02-AA-6257 was being driven by Chanderveer @ Hunny at moderate speed on which Manoj Kumar was the pillion rider while Sunil Kumar was on his separate motorcycle and was following the motorcycle being driven by Chanderveer @ Hunny. At about 7.30 P.M., when they reached near Reliance Petrol Pump located within the area of village Jubbal on Radaur-Yamuna Nagar road, a Car bearing Registration No.HR-11-G-8310 being driven by Amit Kumar (driver of the offending vehicle) at high speed and also rash and negligent manner, came from the side of Yamuna Nagarl. While coming on wrong side of the road, it hit the motorcycle being driven by Chanderveer @ Hunny. As a result, both the motor cycle riders have sustained multiple and grievous injuries. They were taken to Civil Hospital, Yamuna Nagar, by their companion Sunil Kumar, where Chanderveer @ Hunny was declared dead. Thereafter, FIR No.29 dated 26.11.2016 under Sections 279, 337, 304-A of Indian Penal Code was registered at Police Station Radaur with respect to the said accident on the statement of eye-witness, namely, Sunil Kumar.

The mother of the deceased filed the claim petition claiming that the deceased Chanderveer @ Hunny, who was a healthy young boy of about 26 years, was doing business as partner in a firm under the name and style of M/s. Surya Packers, Radaur besides doing the work of property dealing and was earning Rs.30,000/- per month. However, the Tribunal did not believe this for the purposes of calculating the income of the deceased for the reason that no documentary evidence could be produced to show such income of the deceased and to establish the fact that he was partner in firm M/s. Surya Packers, Radaur, albeit income tax return of the deceased which had been placed on record as Ex.P5 is there which reflects that his yearly income was Rs.2,51,920/-. This return was filed in the individual capacity and not as a business partner. Since there was no tax liability, net income of the deceased had been taken as 2,51,920/- per annum and after calculating the same and in view of the calculation in accordance with the law laid down by Hon'ble Supreme Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***, the total compensation has been assessed at Rs.29,88,000/- along with interest @ Rs.8% per annum and also the counsel's fee which was assessed at Rs.2200/-

Learned counsel for the appellant raises sole question before this Court that in view of the law laid down by the Apex Court in the case of ***Rani Gupta and others Vs. M/s. United India Insurance Company Ltd. and others***, *JT 2009 (5) SC 314*, since there was loss of dependency of the family was equivalent to his contribution to run the business, the income should have been assessed at lower side. It is further urged that the total loss of the income should have been taken as only the loss of managerial capacity in the partner ship firm.

The aforesaid limb of submission raised on behalf of the appellant is noted only to be rejected for the following reasons:-

First and foremost reason is that since no documentary evidence could be produced either by the claimant or the other side, the Tribunal has not based its finding for the purpose of calculation of income, from the business rather, it is taken into consideration the income tax return filed by the deceased in his individual capacity and secondly the claimant's case was that the deceased was a sleeping partner in the partnership firm and was not active partner.

Having regard to the facts and circumstances of the case and after going through the impugned judgment, this Court is of the opinion that, considering the income shown in the income tax return by the deceased, the income of the deceased assessed by the Tribunal cannot be faulted with as that was the easiest and the safest way for calculating the income in the absence of other evidence.

Accordingly, since no other submission has been raised on behalf of the appellant, this appeal being devoid of any merit is dismissed. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

19.12.2018
Anjal

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No