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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3863-2014 (O&M) AND
XOBJC-237-CII-2014 (O&M)
Date of decision : 10.01.2018

Shri Ram General Insurance Company Ltd.

... Appellant(s)

Versus

Mahabir and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Sheoran, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant(s).

Mr. Raman Chawla, Advocate
for the cross-objectors/claimants.

Mr. Jainainder Saini, Advocate
for respondent No.5.

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AMIT RAWAL, J. (ORAL)

CM-11806-CII-2014 IN FAO-3863-2014

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 98 days in re-filing the present appeal is condoned.

CM-11807-CII-2014 IN FAO-3863-2014

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 176 days in filing the present appeal is condoned.

CM-28636-CII-2014 IN XOBJC-237-CII-2014

Allowed as prayed for.

MAIN CASE

This order of mine shall dispose of the appeal bearing ***FAO No.3863 of 2014*** titled as ***"Shriram General Insurance Company Ltd. V/s Mahabir and others"*** at the instance of the appellant-Insurance Company and the cross-objections bearing No.237-CII of 2014 at the instance of the claimants seeking enhancement, against the Award dated 25.03.2013, whereby a compensation of ₹3,55,600/- along with interest @ 7.5% per annum, had been awarded

Learned counsel appearing on behalf of the appellant-Insurance Company submits that the deceased Sanjay, aged 20 years, had died in a motor accident occurred on 27.01.2011, arising out of use of motor vehicle bearing No.HR-46-3330 and Tata 407, insured with the Insurance Company. In this regard, DDR bearing No.5 of 28.01.2011 was registered at Police Station Sadar Hisar. The claimants i.e. father and brother of the deceased, preferred a claim petition under Section 163-A of the Motor Vehicles Act (in short 'the Act') claiming the income of the deceased as ₹3,200/- per month i.e. ₹38,400/- per annum. The learned Tribunal has committed illegality and perversity in not exonerating the Insurance Company as owing to the evidence brought on record, the deceased Sanjay was found to be travelling as a gratuitous passenger, thus, there was a breach of the terms and conditions of the insurance policy. In this regard, he has drawn the attention of this Court to the cross-examination of PW-3, Anoop Singh, who stated that there were four passengers travelling in Tata 407 and the canter was empty. It is reliable that since the seating-capacity is of three passengers, therefore, fourth passenger would be the deceased one and the payment of fare cannot be ruled out, thus, urges this Court for setting aside the award under challenge.

Mr. Raman Chawla, learned counsel appearing on behalf of the cross-objectors submits that the compensation to the tune of ₹3,55,600/- awarded by the Tribunal is too meagre as the Tribunal has applied the deduction of ½ instead of 1/3rd as per Second Schedule attached with Section 163-A of the Motor Vehicles Act. Moreover no increase was made in the salary towards future prospects and the amount of ₹10,000/- towards funeral expenses, transportation of dead body, loss of estate etc., is also on lower side.

As regards the cross-objections, he submits that the the Tribunal has taken care of all the heads sufficiently and there is no scope for further enhancement, thus, urges this Court for dismissal of the cross-objections.

I have heard the learned counsel for the parties and appraised the paper book and of the view that on examination of the record of the Court below, particularly Registration Certificate (Ex.R-7), the appeal of the Insurance Company is bereft of any merit, as against the column of seating capacity, it is no where mentioned that the vehicle was permitted to have a seating capacity of three persons, rather mentioned as "A.P.R". No provisions of rule has been pointed out that the TATA 407 was prohibited to carry more than three passengers. Since it was being used for loading and unloading of the goods including the waste material, the labourer is required to be employed. The deceased had gone to sell the agricultural produce and was travelling, therefore, he cannot be branded as gratuitous passenger, thus, there is no force and merits in the submissions of Mr. Sheoran, viz-a-viz the breach of the terms and conditions of the insurance policy, resulting into, exoneration of the insurance company to pay the liability and accordingly, the aforementioned plea of the insurance company, in the absence of the documentary evidence, is hereby rejected.

Now adverting to the cross-objections, in case of a death, an amount of ₹9,500/- towards loss of consortium, loss of estate and funeral expenses has been prescribed under Second Schedule of the Act, whereas the compensation of ₹10,000/- towards conventional heads has been awarded, therefore, I am of the view, that the aforementioned amount takes care of all the aforementioned heads. The Tribunal has rightly taken the income of the deceased as ₹3,200/- and applied multiplier of '18'. However, as regards the deduction, the Tribunal has wrongly applied the deduction of ½, whereas, it should have been 1/3rd as per Schedule-II carved out under Section 163-A of the Act. Accordingly, I take the income of the deceased ₹3,200/- and apply 1/3rd deduction and multiplier of 18, the amount of compensation is reassessed as under:-

Sr. No.	Heads of claim	Amount (₹)
1	Income	3200
2	Future prospects	
3	Less Deduction (1/3rd)	1066
4	Multiplicand (annualized by multiplying 12)	25608 (2134x12)
5	Multiplier	18
6	Loss of dependence	460944
7	Loss of Consortium	5000
8	Loss of estate	2500
9	Funeral expenses	2000
	Total	**4,70,444/-**

The total compensation payable shall be **₹4,70,444/-**. The enhanced amount of compensation shall also attract interest @ 6% per annum from the date of filing of the appeal till the date of realization. The liability shall remain the same as has already been determined by the Tribunal.

Resultantly, the appeal bearing No.FAO-3863-2014 is dismissed and the cross-objection bearing No.237-CII of 2014 is allowed.

(AMIT RAWAL)
JUDGE

10.01.2018
Yogesh Sharma

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**