IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3370 of 2019(O&M)
Date of Decision:19.07.2019

SBI General Insurance Co. Ltd. ....APPELLANT

Vs.

Sajjan Pal and others
.................RESPONDENTS

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

Present: Mr.Suman Jain, Advocate with
Ms. Mriganka Nagpal, Advocate for the
applicant-appellant.

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DR. RAVI RANJAN, J.(Oral Judgement)

CM-14976-CII-2019

This is an application filed under Section 5 of the Limitation Act seeking condonation of delay of 81 days which has occurred in filing the present appeal.

Heard.

In view of the averments made in the application, delay of 81 days in filing the present appeal, is hereby condoned.

Application stands disposed of.

FAO No.3370 of 2019(O&M)

This appeal has been preferred by the appellant-Insurance Company assailing the Judgment and Award dated 18.10.2018 passed by the Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as 'the Tribunal') in MACT case No.37 RBT of 2017, by which the claim petition filed by the respondents-claimants under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') has been allowed and Award of compensation to the tune of Rs.50, 57, 584/-(Rs. Fifty Lacs Fifty

Seven Thousand Five Hundred Eighty Four Only), has been held to be recoverable from the driver, owner and insurer of the offending vehicle, i.e., respondents (before the claim petition), jointly and severally along with interest @ 7% per annum to be calculated from the date of filing of the claim petition till its realization.

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

Claim petitioners, being father, mother, minor daughters and the widow of the deceased-Sandeep, filed a claim petition under Section 166 of the Act making averments that on the fateful day, the deceased-Sandeep alongwith his cousin Ramesh son of Balbir Singh was returning to his village Kanwali from Sonepat in a vehicle bearing Registration No.HR 16Q-8248 which was moving at a moderate speed and Rajesh taking the rear seat. It is claimed that when Sandeep and Rajesh reached near Gaushala Village Rohat, a truck bearing Registration No.PB12G-5775 (hereinafter referred to as the "offending vehicle"), which was loaded with iron pipes and was wrongly parked by respondent No.1 in the middle of the road without any indicator or reflector, could not be located in the night as they were travelling at about 3.00 A.M. and it was still dark, as a result of which, the vehicle of Sandeep struck against the offending vehicle and Sandeep died at the spot due to injuries caused by the iron pipes and he was taken to Govt. Hospital, Sonepat where his postmortem was conducted. It is also claimed that FIR No.220 dated 20.06.2016 under Sections 283 and 304-A IPC was registered with respect to the aforesaid accident on the statement given by cousin of the deceased, namely, Rajesh. It is further claimed in the claim petition that deceased-Saneep was aged 30 years at the time of the accident and being working as PTI Teacher in JSS Khalsa School, Budh Vihar

Phase-1, Delhi was earning Rs.23090/- per month. It is next claimed that the claim-petitioners were fully dependent upon the deceased and they have suffered great loss due to his untimely death. Respondent No.1 of the claim petition is the driver of the offending vehicle whereas respondent No.2 of the claim petition is the registered owner of the offending vehicle which is insured with respondent No.3-Insurance Company (appellant herein) at the time of the accident.

Pursuant to the notices issued, respondent No.3-Insurance Company contested the claim by filing written statement denying the age of the deceased and the fact that the deceased was working as PTI Teacher in JSS Khalsa School, Budh Vihar Phase-1, Delhi and was earning Rs.23090/- per month, as also the averments regarding the accident was denied for want of knowledge. It was also averred that the accident appeared to be the result of negligence of the deceased himself and further that the amount of compensation claimed by the claim petitioners is highly excessive and exorbitant.

The Tribunal, on the basis of the pleadings of the parties, framed following issues:-

> "1. Whether the accident in question had taken place due to rash and negligent parking of the offending vehicle, bearing registration No.PB-12G-5775, by respondent no.1? OPP
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> 2. Whether on account of injuries suffered in the above-mentioned accident, Sandeep had died, if so, to what amount of compensation the claimants are entitled to and from whom?OPP
>
> 3. Relief."

The parties led evidence and, thereafter, on the basis of the materials available on record, the Tribunal has come to the conclusion that the accident was the result of negligence by the driver of the offending vehicle in parking the same without any indicator or reflector in the night and, as such, the same was not visible at about 3.00 A.M. when the accident took place. It has further been held that since the offending vehicle was insured with the respondent-Insurance Company of the claim petition (appellant herein), the liability would be jointly and severally of the respondents and in view of the insurance cover, the Insurance Company would be liable to indemnify the owner.

The Tribunal also held that in view of the matriculation certificate of the deceased-Sandeep produced by the claimants, his age, at the time of the death, was 31 years and also that he was working as PTI Teacher in JSS Khalsa School, Budh Vihar, Phase-1, Delhi in view of the testimony of PW-3 who has also produced copies of the relevant records including service book, attendance sheet, appointment letter and salary statement etc. It stood established therefrom that Sandeep was earning Rs.23090/- per month at the time of the accident. On that basis, the calculation of compensation amount has been done choosing the multiplier to be 16 and following the decision of Constitution Bench of the Hon'ble Supreme Court of India rendered in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009,** the final compensation amount has been assessed.

In the aforesaid background of the factual matrix, I have heard learned counsel for the appellant-Insurance Company.

Learned counsel for the appellant--Insurance Company raises diverse issues for the purpose of assailing the impugned Judgement and Award.

The first and the foremost issue is that the documentary evidence of salary is only till March 2016 whereas the accident has taken place in the month of June 2016. What has happened, in between three months, has not been explained by the claimants anywhere to show as to whether the deceased-

Sandeep was still in job or he had left the job or/and had started working somewhere else.

The second issue which has been raised by the appellant-Insurance Company is that it is apparent from the records produced that though it is a fact that the deceased was working as a PT Instructor in a private school but he was merely a Probationer, therefore, he cannot be held to have a permanent employee and, thus, the claimants should not be entitled for 50% of amount of the income of the deceased under the head of future prospects in terms of the decision of the Hon'ble Apex Court in **Pranay Sethi case (supra).**

The third issue raised on behalf of the appellant-Insurance Company is that in view of the fact that the vehicle was in stationery condition parked on the left side of the road as per the site plan, this becomes a case of contributory negligence, therefore, responsibility should also have been fixed upon the negligent driver of the vehicle which met with the accident, i.e., the deceased-Sandeep himself.

The fourth issue which has been raised on behalf of the appellant-Insurance Company is that father of the deceased has been considered as a dependent which is entirely against the the view of the decision of Hon'ble Supreme Court rendered in **Sarla Verma and Ors. v. Delhi Transport Corporation and Another, 2009 ACJ 1298 (SC).**

In view of the aforesaid lacuna, it is urged that case put forward by the claimants should have been discarded.

So far as the first issue is concerned, i.e., regarding production of salary certificate only till March 2016 whereas the accident took place in the month of June 2016, this limb of argument raised on behalf of the appellant is noted only to be rejected for the reason that the service book has already been produced which has been marked as Annexure P-7 in which it has been clearly stated that till May 2016, the tenure of the deceased as a Probationer PTI teacher was extended and in June 2016 he died. Thereafter, there was no scope of extension from June 2016 onwards. This clearly goes to show that he was employed there and the service book also discloses that his employment was on the basic salary of Rs.5500/- and the salary certificate shows that he was earning Rs.23090/- per month as salary.

In such a situation, it cannot be held that for three months he was not there or he was earning somewhere else because the entry in service book is quite clear in that regard.

The second issue raised on behalf of the appellant-Insurance Company is regarding the amount of future prospects which is to be added for the purpose of calculating just and proper compensation as per the ratio laid down by Hon'ble Apex Court in **Pranay Sethi case (supra).** It is contended on behalf of the appellant-Insurance Company that since the deceased-Sandeep was a Probationer PTI Teacher, his services cannot be considered to be of permanent nature and since it is not permanent then 40% of the income could have been added in place of 50%.

The Hon'ble Apex Court in paragraph No.61(iii) of the said decision has held that for determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects would be required where the deceased had a permanent job and was below the age of 40 years whereas in paragraph No.61(iv) of the same decision, it is stated that in case the deceased was self-employed or was employed on a fixed salary, an addition of 40% of established income would be warranted if the age is below 40 years.

Prima facie this limb of argument advanced by learned counsel for the appellant-Insurance Company appears to be attractive but on deeper scrutiny, the same is not found tenable for the following reasons:-

First and foremost reason is that while dealing with the said issue under a beneficial legislation and in a proceeding which is summary in nature and also in nature of merely an inquiry, such strict definition would not be required to be applied. However, even if it is assumed that he was not a permanent employee then it will have to be seen that he will fall under which category because in paragraph No.61 (iii) & (iv) also of **Pranay Sethi(supra)**, 40% would only be required to be added when the deceased was self-employed or was employed on a fixed salary. However, from the evidence which has been led, it is apparent as discussed above, from the service book (Annexure P-7) that the deceased was employed on a basic salary of Rs.5500/- and the total salary which he was drawing was Rs.23090/- as per the salary certificates produced by the Principal himself of the college. Thus, he cannot be held to be an employment under a fixed salary or has self-employed. That apart, there is no evidence on record to show that his employment was not against the permanent post or irregular or whatever. Merely, the factum of the deceased being a Probationer on a permanent post, would not be take away the rights of the claimants.

In view of the above, it is held that the deceased cannot be put in any category save and except the same which has been described under paragraph 61(iii) in **Pranay Sethi(supra).**

The third issue raised on behalf of the appellant-Insurance Company is that, in view of the admitted position that the offending vehicle was stationery as the same was parked on the highway at the left side and the fact that it has been struck from behind by the vehicle of the deceased, this would be a case of the contributory negligence.

However, in my view, since this is a case in which the vehicle was parked on a highway in the night without any reflector or indicator, as the evidence has also come supporting the averments made in claim petition, as also the First Information Report, there is no material available on the basis of which it can be held that it is a case of contributory negligence as contribution would have been only in case if the vehicle was legitimately allowed to be parked there on the highway in the night and it would have followed the traffic rules. It is nobody's case that it was a parking spot prepared besides the road by the concerned authority rather the case is that vehicle was parked in the middle of the road but the site plans show that it was parked on the left side of the road, however, not in the parking zone.

It is contended by learned counsel for the appellant that it is a four lane road, therefore, there was no occasion for the vehicle of the deceased to go and strike the parked vehicle from the rear side but he forgets as it was 3.00 A.M. in the morning and ordinarily the vehicles ply on the left side of the road taking it a safe proposition and it is also stated in the claim petition and the evidence led by the claimants that vehicle was moving at a moderate speed and there is no evidence otherwise and the parked vehicle was not having any indicator or reflector. In such a situation, the negligence appears to be in parking the vehicle itself. Thus, it would very difficult to hold it to be a case of contributory negligence. However, this issue does not appear to have been seriously raised on behalf of the appellant at the time of hearing before the Tribunal though from the written statement it appears that one sentence is there that it may be a case of contributory negligence.

As far as fourth issue raised on behalf of the appellant-Insurance Company is concerned, true it is that in **Sarla Verma case (Supra)**, the Hon'ble Apex Court has held that the father is supposed to be earning and also supposed to support the family unless there is something on record to show that he is not earning and was dependent upon the deceased.

However, in the case in hand, in the claim petition as well as in the evidence led by the claimants, it has been stated that the father, who was 59 years of age at the time of the accident, was dependent upon his family but there is nothing on record produced on behalf of the respondents that he, even at the age of about 60 years, was still working somewhere, as ordinarily the age of superannuation in our country is about 58 years, or after retirement, he was receiving certain retiral benefits. Even there is no suggestion of that count given at the time of cross-examination by the appellants to the witness of the claimants. In the absence of that, it cannot be held that only on the basis of formulating such issue at the time of hearing without any specific averment in the pleading and evidence that the father was not dependent upon the deceased.

Having regard to the aforesaid discussion, this issue raised on behalf of the appellant is also found untenable.

By way of last resort, it is submitted on behalf of the appellant that though the claim put in the claim petition is only for Rs.40 lacs but the Tribunal has passed the Award and given Rs.50,57,584/-, so it is more than Rs.10 lacs what was actually demanded. This limb of argument is also noted only to be rejected. The inquiry which is done by the Tribunal in a motor vehicular accident is under beneficial legislation and, as such, the same cannot be taken as adversarial litigation. The Tribunal has to assess the just and proper compensation amount as per the statute and considering the law declared by the

Courts specially the Apex Court.

In my opinion, correct multiplier has been chosen and the calculation done by the Tribunal cannot be faulted with.

Having regard to the discussions made as above, this Court is of the view that the appellant-Insurance Company has not be able to set-forth or put forward any cogent ground or question of law warranting interference of this Court in the impugned Judgment and Award passed by the Tribunal.

In the result, this appeal fails and is dismissed, however, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

19.07.2019
Anjal

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