IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3568-2007(O&M) with
XOBJC-73-CII-2009(O&M)
Date of decision:-30.7.2019

New India Assurance Company Ltd.
...Appellant

Versus

Mannu and others
...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Ashwani Talwar, Advocate
for the appellant.

Mr.Nitin Jain, Advocate
for respondent No.1/cross-objector.

Mr.Arun Sharma, Advocate for
Mr.T.K. Joshi, Advocate
for respondent No.3.

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H.S. MADAAN, J.

Initially, Ms.Mannu, aged about 28 years daughter of Sh.K.K.Gupta deceased had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Krishan Lal – driver-cum-owner and New India Assurance Company Ltd., Bhiwani – insurer of truck bearing registration No.HR-16GA/0295 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.50 lacs. In that petition, she had impleaded Smt.Sarita Gupta as a respondent. Subsequently, on an application filed by Smt.Sarita Gupta, she was transposed as petitioner/claimant No.2.

As per the case of the claimants, on 20.10.2002, Sh.K.K. Gupta along with his wife Smt.Sarita Gupta, two sons, namely, Nihar and Mayank and father – Chandgi Ram was travelling in a Maruti car bearing registration No.HR-20E/7423 coming from Bhiwani and going towards Hisar; that the car was being driven at a normal speed on the left side of the road; that at about 3:00 p.m. when the car reached near Peer Baba Mazar in the area of village Jat Lohari, then the offending vehicle being driven by respondent No.1- Krishan Lal in a rash and negligent manner was spotted coming from opposite side; that Sh.K.K.Gupta took his car on extreme left side of the road and slowed down its speed, but respondent No.1 – Krishan Lal by taking the offending vehicle on the wrong side hit a jeep, which was being followed by the ill-fated Maruti car; that the offending vehicle fell down on the car and the jeep, resultantly the occupants of the car and jeep received injuries; that Sh.K.K. Gupta succumbed to the injuries at the spot, however the injured were taken to hospital; that Sh.Chandgi Ram was declared brought dead. According to the claimants, the deceased was a Maths Teacher working with Campus School, CCS HAU, Hisar and was drawing salary of Rs.14,000/- per month.

On getting notice, respondent No.2 – insurance company appeared and filed a written statement contesting the claim petition, ultimately praying for its dismissal. Respondent No.1 did not appear despite service and was proceeded against ex parte. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the claim petition was allowed by Motor Accidents Claims Tribunal, Hisar and compensation of Rs.8,75,000/- with interest at the rate of 9% per annum from the date of filing of the petition till the realization of that amount was awarded to the claimants, payable by both the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

Feeling aggrieved by the said award, the respondent No.2 – insurance company has filed an appeal before this Court, notice of which was given to the respondents, who put in appearance through counsel. Respondent No.1 – claimant has filed cross-objections seeking enhancement of compensation.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence adduced before it considering the eye-witness account of the accident provided by PW3 Smt.Sarita Gupta, who deposed in consonance with the case of the claimants as given in the claim petition, statement of PW4 Suresh Kumar, Additional Ahlmad, who stated that respondent Krishan Lal was facing trial with regard to the accident in question further proving copy of report under Section 173 Cr.P.C. Ex.P8, copy of FIR Ex.P12 and copy of postmortem report Ex.P13, in absence of any rebuttal evidence adduced by respondents came to the conclusion that rash and negligent driving of the offending vehicle by respondent No.1 Krishan Lal had resulted in the accident, in which Sh.K.K. Gupta had lost his life.

With regard to the quantum of compensation, the Tribunal had taken age of the deceased to be 45 years. However, the Tribunal omitted to refer to the income tax return Ex.P6, wherein date of birth of deceased is recorded as 25.11.1950, which means that on the day of accident, he was aged about 52 years. The Tribunal fell in error in observing that no proof of age has been brought on file and took into consideration the age of the deceased entered in the postmortem report when specific date of birth was mentioned in the income tax return. Therefore, I take age of deceased to be 52 years at the time of his death.

It has come on record that the deceased was drawing salary of Rs.14,885/- per month. PW1 Sh.Subhash Kaushik had deposed in that regard. It may be mentioned here that the Tribunal has wrongly deducted certain allowances paid to the deceased which could not be done and his gross salary is to be taken into consideration. In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** when the deceased had a permanent job and was between the age of 50 to 60, an addition of 15% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.14,885 + 2,232 = Rs.17,117/-.

The Tribunal fell in error in not deducting any amount towards personal expenses. In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** in such an eventuality, deduction towards self-expenses is to be taken as 1/3rd. Doing that the dependency of claimants comes out to Rs.11,412/- per month, annual dependency comes out to Rs.11,412 x 12 = Rs.1,36,944/-.

The Tribunal has used multiplier of 12, whereas when the deceased was between the age group of 51 to 55 years, multiplier of 11 should be applied in terms of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra)***. Doing that the compensation payable comes out to Rs. 1,36,944 x 11 = 15,06,384/-.

The Tribunal has further awarded a sum of Rs.11,000 towards consortium and funeral expenses. However, in view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 15,06,384 + 70,000 = 15,76,384/-.

The Tribunal has awarded compensation of Rs.8,75,000/- along with interest with interest at the rate of 9% per annum from the date of filing of the petition till the realization of that amount, payable by both the respondents jointly and severally. The same is enhanced to Rs.15,76,384/-. The interest awarded @ 9% is somewhat on higher side. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.15,76,384/-, payable by both the respondents jointly and severally. Since the amount has been enhanced, the directions with regard to release of compensation amount to the claimants shall stand modified proportionately.

With such modifications, XOBJC-73-CII-2009 are partly allowed.

FAO-3568-2007 filed on behalf of the insurance company is also partly allowed.

30.7.2019 **(H.S.MADAAN)**
Brij **JUDGE**

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