IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4520 of 2019 (O&M)
Date of decision: 19.7.2019

SBI General Insurance Company Limited

...Appellant

Versus

Seema and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Suman Jain, Advocate,
for the appellant.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 2.4.2019 passed by the Motor Accident Claims Tribunal, Panipat, wherein respondents No.1 to 4 herein have been allowed compensation of ₹45,27,864/- on account of death of Ajay Kumar.

In brief, the facts are that on 2.11.2016 deceased Ajay Kumar, aged 34 years, was going to drop his children to the school in Panipat by his motor cycle bearing registration No. HR-06AH-9308. When he reached near Malik Petrol Pump, Sanoli Road, Panipat, he was hit by a car bearing registration No. HR-60D-6414, being driven by respondent No.1 (in the claim petition) in rash and negligent manner, as a result of which, Ajay Kumar sustained multiple grievous injuries and ultimately succumbed them. It was alleged that the accident took place due to rash and negligent driving of respondent No.1 and consequently FIR 1158 dated 4.11.2016 under Sections 279, 337 and 304-A IPC came to be lodged with the Police Station Chandni Bagh, Panipat. With these averments, a claim petition was filed by the widow, children and the mother of the deceased claiming that they were fully dependent on the deceased for their maintenance and livelihood. It was claimed that the deceased was running a handloom business and was earning ₹50,000/- per month.

The claim petition was contested by the respondents, inter-alia, pleading that the accident took place due to the negligence of the deceased. Issues were framed and thereafter oral as well as documentary evidence was led by the parties in support of their respective claims.

After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹45,27,864/- which has now been challenged in the instant appeal.

Learned counsel for the appellant submits that the amount of compensation awarded to the respondents by the Tribunal is on the higher side and as such the same deserves to be reduced. It is submitted that the Tribunal has erred in taking the income of the deceased on the basis of the last income tax return for the assessment year 2016-2017 (Ex. P23), rather than taking an average of the last five income tax returns and this has led the income of the deceased on the higher side. It is further submitted that the Tribunal ought to have deducted 1/3rd towards personal and living expenses of the deceased instead of 1/4th, as the widow cannot be considered dependent when she is earning from the business of the deceased.

I have heard learned counsel for the parties and have perused the impugned award.

The Tribunal, after examining the evidence produced by the respective parties held that the deceased was 34 years of age and assessed his annual income as ₹2,60,845/-. The Tribunal further following the law laid down by the Hon'ble Supreme Court in **Sarla Verma and others Versus Delhi Transport Corporation and another (2009) 6 SCC 121 and National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009,** added 40% towards future prospects and deducted 1/4th towards personal and living expenses of the deceased. In view of the documentary evidence with regard to the actual income of the deceased, the Tribunal rightly took into consideration the income tax return for the assessment year 2016-2017 (Ex. P.23) for assessing the income of the deceased.

From a bare reading of the impugned award, this Court is of the view that the findings recorded by the Tribunal are based on the proper appreciation of the evidence brought on record and cannot be said to be perverse. Since there is no dispute to the age and income of the deceased, the Tribunal has rightly awarded the compensation after following the law laid down by the Hon'ble Supreme Court in the above referred judgments. The award passed by the Tribunal is just and proper and no interference is called for in the same.

Consequently, the appeal filed by the the appellant being devoid of merit stand dismissed.

19.7.2019 **(JAISHREE THAKUR)**
prem **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	No