IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3090-2012(O&M) with
XOBJC-111-CII-2012
Date of decision:-11.2.2019

The New India Assurance Company Ltd.

...Appellant

Versus

Nirmala Devi and another

...Respondents

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

Present: Mr.Neeraj Khanna, Advocate
for the appellant.

Mr.Rajesh Sethi, Advocate with
Mr.Gaurav Kamboj, Advocate and
Ms.Sukhpinder Kaur, Advocate
for respondent No.1.

Respondent No.2 proceeded ex-parte
vide order dated 24.9.2012.

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<u>H.S. MADAAN, J.</u>

On account of death of Sh.Jaimal Singh, a Practicing Advocate in a motor vehicular accident, which took place on 28.8.2010 at about 1:05 p.m. within the jurisdiction of Police Station City, Sirsa allegedly on account of rash and negligent driving of a Maruti Car bearing registration No.HR-26H-3052 by respondent No.1 – Naresh Kumar, his wife Smt. Nirmala Devi aged about 60 years had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Naresh Kumar – driver-cum-owner and New India Assurance

Company Ltd. - insurer of the maruti car. That claim petition was allowed by Motor Accidents Claims Tribunal, Sirsa and compensation of Rs.8,80,000/- with interest at the rate of 7.5% per annum was awarded to the claimant payable by respondents No.1 and 2 jointly and severally.

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

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

Learned counsel for the appellant has confined his arguments on the point that age of the deceased was 68 years but was wrongly taken to be 65 years by the Tribunal and the claimant appearing as PW1 in her affidavit had given the age of the deceased as 68 years, therefore, compensation on higher side was granted.

On the other hand, learned counsel for the respondent/claimant has contended that in the post-mortem report of the deceased, his age was mentioned to be 65 years, for the said reason it was taken to be so by the Tribunal.

After hearing the rival contentions of the parties, I find that in the claim petition itself the age of the deceased is mentioned to be 68 ¾ years with his date of birth being 3.3.1941. The accident in this case had taken place on 28.8.2010, therefore the deceased was aged about 69 years at the time of his death. The wife of the deceased - the respondent/claimant had rightly given his age. The Tribunal lost site of these facts and wrongly held the age of the deceased to be 65 years.

The Tribunal has used multiplier of 7 whereas the multiplier of 5 should have been applied in terms of the authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.***

As per the case of the claimant, the deceased was a Practicing Advocate. The Tribunal has taken his annual income to be Rs.1,80,000. Learned counsel for the claimant has argued that as per the income tax return 2009-10, his annual income was Rs.2,10,000/- but it was wrongly taken to be Rs.1,80,000/- by the Tribunal and income of Rs.2,10,000/- be taken.

However, I find that a Practicing Advocate cannot have a fixed income per month or per annum and the same may vary to some extent. The Tribunal has not done anything wrong in taking his annual income as Rs.1,80,000/-, when we see that as per income tax return for the year 2008-09, the income of the deceased was Rs.1,74,000/- and variation in his income is reflected in various income tax returns proved in evidence.

The Tribunal has deducted 1/3rd towards personal expenses. The same was correctly done in view of settled law in ***Smt.Sarla Verma's*** case (supra). The dependency of the claimant was thus worked out to Rs.1,20,000/-(1,80,000 – 60,000) and using multiplier total compensation was calculated as Rs.8,40,000/-(1,20,000 x 7). However, the same was wrongly done since appropriate multiplier to be used was 5 as discussed above. In that way, the compensation comes out to Rs.6,00,000/-(1,20,000 x 5).

No amount towards future prospects was rightly awarded since age of the deceased was more than 60 years. The Tribunal had awarded a sum of Rs.20,000/- on account of loss of consortium, mental pain and agony. The similar amount towards funeral expenses and transportation etc. In terms of the authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** the claimant is entitled to get a sum of Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses.

Thus the total amount of compensation comes to Rs.6,70,000/- (6,00,000 + 15,000 + 40,000 + 15,000).

Therefore, the appeal filed by the Insurance company is allowed partly and compensation awarded to claimant is reduced from Rs.8,80,000 to Rs.6,70,000/-. The interest granted and other terms and conditions for payment of compensation shall remain the same as given in the award.

In view of the above discussion, cross-objections filed on behalf of the claimant being devoid of merit stand dismissed.

11.2.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No