IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-387-2012 (O&M)
Date of decision: 03.07.2019

Cholamandalam MS General Insurance Co. Ltd. **...Appellant**

V/s.

Sunita and others **...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Ms. Vandanaa Malhotra, Advocate for the appellant.

Mr. Suvir Dewan, Advocate for the National Insurance Co. Ltd.

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RITU BAHRI, J. (Oral).

XOBJC-57-CII-2012

The cross objection has been filed by the claimaints. The income of the deceased has been taken as Rs.3900 per month taking him to be unskilled labourer. Income has been rightly taken and the compensation has been assessed as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.3,900/- per month i.e. Rs.46,800/- per year
(ii)	1/4th of above is deducted as personal expenses of the deceased	46,800-11,700=35,100
(iii)	Compensation after multiplier of 17 applied	35,100 X 17=5,96,700/-
(iv)	Compensation under loss of estate	Rs.10,000/-
(v)	Compensation under loss of consortium	Rs.20,000/-
(vi)	Compensation towards funeral expenses	Rs.5,000/-
(vii)	Compensation towards transportation	Rs.2,500/-
	TOTAL COMPENSATION AWARDED	**Rs. 6,34,200/-**

The compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77 and

National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.4,000/- per month
(ii)	40% of (i) above to be added as future prospects	4,000+1600=5600
(ii)	1/3rd of (ii) above is deducted as personal expenses of the deceased	5600-1867=3733
(iii)	Compensation after multiplier of 17 applied	3733 X 12 X 17=7,61,532/-
(iv)	Compensation under loss of estate	Rs.15,000/-
(v)	Compensation under loss of consortium	Rs.40,000/-
(vi)	Compensation towards funeral expenses	Rs.15,000/-
(vii)	Compensation towards transportation	Rs.2,500/-
	TOTAL COMPENSATION AWARDED	**Rs. 8,34,032/-**

The amount of compensation of **Rs.8,34,032/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The insurance company has to make payment of compensation. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in ***Civil Appeal Nos. 10588-89 of 2018*** titled as ***Sebastiani Lakra & others Vs. National Insurance Company Ltd and another,*** 2018(4) RCR (Civil) 837. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly the award stands modified to the above extent and the cross objection is allowed.

FAO-387-2012(O&M)

The insurance company has come up in appeal against the award of the Motor Accident Claims Tribunal (in short 'Tribunal') dated

13.10.2011 whereby two claim petitions have been allowed and the appellant-insurance company is held liable to make compensation to all the claimants.

Learned counsel for the insurance company has argued that as per the FIR No. 480/13.11.2009 (Ex. Pl) it was a case of hit and run and FIR had been registered against the offending vehicle and there was no evidence to prove that the offending truck bearing registration No. HR-61A-1390 was involved in any manner in the accident. The accident took place on 12.11.2009 about 10.00 p.m. Even though the FIR was registered on 13.11.2009, but the vehicle in question was involved after 2 months and there is no eye-witness to this accident and the truck bearing registration No. HR-61A-1390 has been falsely involved in this accident.

A perusal of the award shows that after registration of FIR (Ex.P-1), challan under Section 173 Cr.P.C. was presented against the driver-respondent No. 1. The Tribunal has referred to the judgment passed in the case of ***Girdhari Lal V/s. Radhey Shyam,*** 1993(2) PLR-109 that presentation of challan is prima facie safe to presume that the accident was occurred on account of rash and negligent driving by the driver. The onus to prove that the accident took place due to rash and negligent driving was on the claimants. The presentation of challan (Ex. P4) was sufficient to return finding on issue No. 1 that truck bearing registration No. HR-61A-1390 was involved in the accident and the driver of that vehicle was driving in a rash and negligent manner. Since the finding on issue No. 1 has been rightly returned by the Tribunal, the appeal of the insurance company is dismissed on this issue.

Learned counsel for the insurance company has further argued that the age of the deceased has been wrongly taken as 27 years and it should have been taken 35 years as per post mortem report. In para 18 of the award, this issue has been considered and the age of the deceased is taken as 27 years as per the school transfer certificate (Ex.P7). Since no objection was raised by the insurance company with respect to this certifcate (Ex.P7), the Tribunal has rightly accepted this certificate and taken the age as 27 years.

Learned counsel for the insurance company has further argued that the dependency has not been correctly calculated. The dependency has been taken to be 4 in number. Learned counsel for the insurance company submits that deceased had one widow, one child and mother. Father had died during the pendency of the claim petition and hence being 3 dependents, the deduction should have been $1/3^{rd}$. The deduction can be taken to be $1/3^{rd}$. Hence, appeal of the insurance company is partly allowed.

Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

03.07.2019
Divyanshi

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