IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1008-2015(O&M)
Date of decision:-15.1.2019

Reliance General Insurance Company Ltd.

...Appellant

Versus

Ramawati and others

...Respondents

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

Present: Mr.Subhash Goyal, Advocate
for the appellant.

Mr.Namit Khurana, Advocate
for respondent No.4.

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H.S. MADAAN, J.

Briefly stated, the facts of the case are that claimant Ramawati – widow, Ms.Smridhi and Ms.Partigya – minor daughters of Laxman Kumar Gupta, a victim of road side accident had filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against Jai Kishan Aggarwal – owner, Reliance General Insurance Company Ltd. - insurer of Mahindra Maxi Pick-up bearing registration No.HR67-8381 (hereinafter referred to as Mahindra Maxi Pick-up) claiming compensation on account of death of Laxman Kumar Gupta in a road side accident.

As per the case of the petitioners/claimants, on 8.2.2012, Raj Kumar Chaurasia and Laxman Kumar Gupta were coming from Panipat

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to Deepak Industrial Corporation Gobind Singh Refinery, Ramsara, District Bhatinda (Punjab) in Mahindra Maxi Pick-up vehicle driven by Laxman Kumar Gupta; that at about 11:30 p.m. when such vehicle reached at Odha, 5-6 kms. ahead of Sirsa, then 3-4 *Neel gais* (wild animals like deer) suddenly crossed the road; that Laxman Kumar Gupta tried to avoid hitting them and turned the Mahindra Maxi Pick up vehicle towards his right side, in the process, striking rear tyre of canter bearing registration No.UP17D-2904, which was driven on its correct side; that as a result of accident, Laxman Kumar Gupta suffered internal injuries; that both the vehicles were badly damaged; that Laxman Kumar Gupta was shifted to PHC Odha in an ambulance from where, he was referred to Civil Hospital, Sirsa, however, Laxman Kumar Gupta succumbed to the injuries suffered by him in the accident; that a DDR No.18 dated 9.2.2012 was got recorded with Police Station Odha, District Sirsa by Raj Kumar Chaurasia. As such legal representatives of deceased Laxman Kumar Gupta had filed a claim petition under Section 163-A of the Act contending that deceased was aged about 30 years at the time of his death; that he was working as a driver with respondent No.1 and his income was Rs.3,300/- per month; that the claimants were dependent upon his earnings. They craved that a compensation of Rs.10 lacs be awarded to them.

Notice of the claim petition was issued to respondents. Respondents No.1 and 2 had filed separate written statement, whereas respondents No.3 and 4 were proceeded against ex-parte vide order dated 19.2.2013.

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In the written statement filed on behalf of respondent No.1, he had raised preliminary objections challenging the maintainability of the claim petition, arising of any cause of action in favour of claimants against respondents and locus-standi to claimants to bring the claim petition. *Inter alia* in his written statement, respondent No.1 had submitted that Laxman Kumar Gupta was employed as a driver on Mahindra Maxi Pick up vehicle and was having a valid and effective driving licence; that the said Mahindra Maxi Pick up vehicle was fully insured with Reliance General Insurance Company Ltd., therefore, the answering respondent was not liable to pay any compensation to the claimants. Such respondent conceded that deceased was driving the Mahindra Maxi Pick up vehicle at the relevant time.

In the written statement filed on behalf of respondent No.2 – insurance company, it controverted the assertions in the claim petition raising various legal pleas challenging the maintainability of the claim petition, locus standi of claimants to file it, jurisdiction of the Tribunal to entertain and try the petition and mis-joinder and non-joinder of necessary parties etc. According to respondent No.2, the accident, if any, was caused solely due to the negligence of the driver of the other vehicle bearing No.UP17D-2904, who was not vigilant and was violating the traffic rules at the relevant time. According to such respondent, the driver of the vehicle was not holding a valid and effective driving licence to drive the vehicle.

Refuting the remaining assertions, both the respondents had prayed for dismissal of the claim petition.

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On the pleadings of the parties, following issues were framed:-

1. Whether the deceased died as a result of use of vehicle bearing registration No.HR-67-8381? OPP.
2. Whether the claimants are entitled to be compensated by the respondents on account of death of deceased Laxman Kumar in the motor vehicle accident, if yes how much and from whom? OPP.
3. Whether the respondent No.1 has infringed the conditions of insurance policy, if so what its effect? OPR.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 Ramawati had appeared as PW1 besides tendering documents i.e. attested copy of DDR Ex.P1, attested copy of inquest report Ex.P2 and attested copy of post-mortem examination report Ex.P3.

On the other hand, the respondents tendered in evidence photocopy of insurance policy as Ex.R1, photocopy of registration certificate Ex.R2 and photocopy of driving licence Ex.R3.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants, issues No.2 and 3 in favour of claimants and against respondents, as a result the petitioners/claimants were awarded compensation of Rs.8,27,644/- payable by respondents No.1 and 2 jointly and severally, however observing that insurance company shall make full payment of compensation to the claimants being insurer of the offending

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vehicle.

This award left the insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimants.

Notice of the appeal was given to respondents. However, only respondent No.4 put in appearance through counsel.

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

The claimants had filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988. It is a special provision introduced in the act for payment of compensation on structured formula basis. As per the second schedule, the income of the deceased/injured should be less than Rs.40,000/- per annum for seeking compensation under this provision. As per the case of the claimants, the deceased was earning Rs.3,300/- per month, as such his income was less than Rs.40,000/- per annum. Therefore, legal heirs of the deceased could bring the claim petition under Section 163-A of the Act. The Tribunal on appreciation of evidence adduced before it had decided issue No.1 holding that the accident in question resulting into death of Laxman Kumar Gupta, took place on account of use of Mahindra Maxi Pick Up vehicle.

For making out a case for grant of compensation under Section 163-A of the Act, it is not necessary for the claimants to allege or prove that the accident had taken place due to rash and negligent driving

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of the motor vehicle.

While deciding issue No.2 to the effect *whether the claimants are entitled to be compensated by the respondents on account of death of deceased Laxman Kumar in the motor vehicle accident, if yes, now much and from whom*, the Tribunal on the basis of evidence adduced before it had taken the age of deceased to 30 years, his monthly income as Rs.3,300/- observing that this figure was alleged by the claimants, however no evidence to the contrary could be adduced by the respondents. The Tribunal referring to two citations i.e. ***Santosh Devi Versus National Insurance Company Ltd. & Ors.II(2012), Accident and Compensation Cases 377*** and ***New India Assurance Co. Ltd.Versus Gopali & Ors., 2012(2) Recent Civil Reports 818*** had made deduction of $1/10^{th}$ of total income. Though as per the schedule, the deduction towards personal expenses should be $1/3^{rd}$. I find that the Tribunal clearly fell in error in doing so. The facts of the authorities were quite different and distinct. As per the facts of the case ***Santosh Devi Versus National Insurance Company Ltd. & Ors.***(supra), it was observed that a person who is self employed or is engaged on fixed wages and having monthly income Rs.1,500/-, it would be difficult for him to spend $1/3^{rd}$ on himself leaving $2/3^{rd}$ for family consisting of five persons. As such, deduction of $1/10^{th}$ of the income was made. However, in this case, the monthly income of deceased has been taken to be 3,300/- per month and number of dependant happened to be three and not five unlike the facts of the authority. Similarly, as per the facts of the authority ***New India Assurance Co. Ltd.Versus Gopali & Ors.***(supra), the monthly income of

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deceased was Rs.3,000/- and his family comprised of nine persons. Therefore, those authorities could not possibly come to rescue of the claimants.

Taking income of deceased to be Rs.3,300/- and in terms of the second schedule making deduction of 1/3rd towards expenses, which the victim would have incurred towards maintaining himself had he been alive, the dependency of the claimants comes out to be Rs.3,300 – 1,100 = Rs.2,200, the annual dependency comes out to be Rs.2,200 x 12 = Rs.26,400/-.

The Tribunal has added 30% of the income of the deceased in light of the observations made in ***Sarla Verma and others Vs. Delhi transport Corporation and another, 2009(Sep.) ACC 708***. The Tribunal seems to have lost sight of the fact that it was dealing with a petition under Section 163-A of the Act and not under Section 166 of the Act. The authority ***Sarla Verma and others Vs. Delhi transport Corporation and another***(supra) deals with disposal of claim petition filed under Section 166 of the Act. For deciding petition under Section 163-A of the Act, a structured formula is to be followed. In terms of the schedule when the victim was about 25 years but not exceeding 30 years, multiplier of 18 is to be applied. However, if the age is above 30 years but not exceeding 35 years then multiplier of 17 is to be applied. The Tribunal has applied multiplier of 17. It was rightly done. The compensation payable comes out to Rs.4,48,800/-(26,400 x 17).

As per the schedule, the claimants are entitled to get funeral expenses of Rs.2,000/- and for loss of estate Rs.2,500/-. Adding this

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amount, the compensation comes out to Rs.4,53,300/-(4,48,800 + 4500).

The Tribunal has awarded a sum of Rs.10,000/- to the claimants on account of loss of love and affection, Rs.20,000/- for transportation and last rites expenses, which is not permissible. For loss of estate, the Tribunal has awarded a sum of Rs.10,000/-, which is on higher side.

A sum of Rs.5,000/- is to be awarded to widow of deceased towards loss of consortium. The total compensation comes out to Rs.4,58,300(4,53,300 + 5,000).

The Tribunal has wrongly awarded compensation of Rs.8,27,644/-. The same is reduced to Rs.4,58,300/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.4,58,300/-. As regards the apportionment, 50% of the amount shall go to petitioner/claimant No.1 – Ramawati, whereas remaining 50% to minor petitioners/claimants No.2 and 3. The directions regarding deposit of their shares and other terms and conditions shall remain the same.

With such modification, the appeal is allowed partly with costs.

15.1.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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