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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objections No. 76 of 2019 (O&M)
in/and FAO No. 1075 of 2015 (O&M)
Date of decision: 05.12.2019

United India Insurance Co. Ltd. ...Appellant

V/s.

Lakshami Mehta and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. Paul S. Saini, Advocate for the appellant.

Mr. Kamal Kant Verma, Advocate for the respondents No. 1 to 4/cross-objectors.

Mr. Parvinder Singh, Advocate for respondent No. 6.

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RITU BAHRI, J. (Oral).

CM-8589-CII-2019

For the reasons recorded in the application, the same is allowed and the delay of 20 days in filing the cross objections is condoned.

CM-8590-CII-2019

For the reasons recorded in the application, the same is allowed and the delay of 378 days in re-filing the cross objections is condoned.

CM-8591-CII-2019

Application is allowed and the cross objections No. 76 of 2019 are taken on record.

FAO-1075-2015 (O&M)

The United India Insurance Company Limited has come up in appeal challenging the award of the Tribunal dated 05.11.2014 whereby the claimants have been awarded compensation of Rs.8,80,424/- on account of death of Madan Gopal Mehta who died in a road accident which took place on 24.05.2013.

Brief facts of the case are that on 24.05.2013, deceased Madan Gopal Mehta alongwith Shashi Kant Sharma son of Brij Lal Sharma (driver of car) and Balbir Singh son of Ami Chand (helper of deceased) proceeded towards village Janheri, in the car owned by deceased make TATA Indica bearing registration No. PB-65-B-2690. Madan Gopal Mehta was sitting on the rear seat and the car was driven by Shashi Kant Sharma. At about 01:30 p.m., when they reached near Gurudwara Baba Deep Singh, Solakhiyan and the car was driven at a snail speed by Shashi Kant Sharma, due to gathering at Gururdwara Baba Deep Singh, Solakhiyan, at that time, one Canter bearing registration No.PB-65-R-7549 being driven by respondent No. 1 Jasbir Singh in a rash and negligent manner, struck into the car from behind. Resultantly Madan Gopal Mehta (deceased) received severe and fatal injuries and died while he was being taken to the hospital. Consequently, the claimants filed a claim petition before the Tribunal.

The insurance company is not challenging finding on issue No.1 that the accident took place on account of negligent driving of respondent No.1. This finding has been rightly given in favour of the claimants keeping in view FIR No. 43 dated 24.05.2013 (Ex.PW4/1) was registered at Police Station Singh Bhagwantpur, District Ropar at the instance of Shashi Kant Sharma (PW-1) and testimony of PW-1 and PW-2 (eye witnesses to the accident). The Tribunal has further given a finding that the liability to make payment of compensation is joint and several as the driver had the valid driving licence (Ex. R3), registration certificate

(Ex.R4), goods carriage permit (Ex.R5), national permit for goods carriage (Ex. R6) and installments of tax (Ex.R7).

The deceased was 76 years of age at the time of accident. He was retired as Joint Secretary and was getting pension to the tune of Rs.31,476/- p.m. The Tribunal had assessed the following compensation:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Monthly Income (pension)	Rs.31,476/-
(ii)	Annual income	Rs.31,476/-X12=Rs.3,77,712/-
(iii)	Personal and living expenses (1/3)	Rs.3,77,712/3=Rs.1,25,904/-
(iv)	Income after deduction of personal and living expenses	Rs.3,77,712-Rs.1,25,904=Rs.2,51,808/-
(v)	Amount of compensation after applying multiplier of 3	Rs.2,51,808X3=Rs.7,55,424/-
(vi)	Loss of consortium	Rs.1,00,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Grand Total	**Rs.8,80,424/-**

Hence, the claimants were found entitled to total compensation of Rs.8,80,424/- along with interest @ 6% per annum from the date of filing of the petition till realization.

The Insurance Company is challenging the award on the quantum of compensation. Learned counsel for the insurance company has referred to the Supreme Court judgment of ***Sarla Verma and others V/s. Delhi Transport Corporation and another*** 2009(3) R.C.R. (Civil) 77, to contend that deceased was a pensioner and 3 daughters were married and hence ½ deduction should have been applied to assess the dependency and consortium should have been modified to Rs.40,000/- as per the Supreme Court judgment of ***National Insurance Company Limited Vs. Pranay Sethi and others***, Special Leave Petition (Civil) No.25590 of 2014.

He has further referred to Supreme Court judgment passed in ***New India Assurance Co. Ltd. V/s. Vinish Jain and others*** 2018(1)PLR

759 in which the Supreme Court was considering a case of deceased who was pensioner and was 78 years of age and had two major sons and two grand-daughters and the Supreme Court had applied ½ deduction.

The Cross Objections No. 76 of 2019 has been filed by the claimants for enhancement of compensation.

I have heard learned counsel for the parties and perused the case file. The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account.

A perusal of para 14 of judgment of ***Sarla Verma (supra)*** shows that in case the deceased was married, the deduction towards personal and living expenses of the deceased should be 1/3rd where the number of dependent family members is 2 to 3.

A perusal of Supreme Court judgment passed in ***New India Assurance Co. Ltd. V/s. Vinish Jain and others*** 2018(1)PLR 759 shows that the deceased was pensioner and was 78 years of age and had two major sons and two granddaughters. The Supreme Court had rightly applied ½ deduction since major sons were not dependent on the deceased as they were earning independently and the two granddaughters were not dependent on their grandfather.

In the present case, the deceased was 76 years of age and his family includes wife and 3 daugthers irrespective of being married. It is not the case of the insurance company that all the 3 daugters were earning indpendently. Hence, 1/3rd deduction has been rightly applied by the Tribunal.

Keeping in view that compensation has already been released to the claimants during the pendency of the appeal, consortium amount awarded to the widow is not being deducted and Rs.1,20,000/- (Rs.40,000/- each to all the 3 daughters i.e. respondents No. 2 to 4) under the head of loss of *filial* consortium is being granted as per the judgment passed by Hon'ble the Supreme Court in ***Magma General Insurance Company Ltd. V/s. Nanu Ram Alias Chuhru Ram and others,*** Civil Appeal No. 9581 of 2018. The enhanced amount of compensation of **Rs.1,20,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. 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 the case of ***Dara Singh @ Dhara Banjara V/s. Shyam Singh Varma and others,*** Civil Appeal No. 4528 of 2019.

With the above observations, the appeal of the insurance company is dismissed and the cross objections is allowed. Pending application also stands disposed of.

(RITU BAHRI)
JUDGE

05.12.2019
Divyanshi

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