IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1732-2015 (O&M)
Date of decision: 31.01.2019

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Akhlima and others

...Respondents

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

Present: Mr. M.B. Jain, Advocate
for the appellant.

Mr. Abhimanyu Singh, Advocate
for respondent Nos.1 to 5.

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H.S. MADAAN, J. (Oral)

On account of death of Aslam, aged about 22 years in a motor vehicular accident which took place on 12.04.2013 in the area near bye pass Tauru, District Mewat allegedly due to rash and negligent driving of three wheeler auto rickshaw No.HR-47B-7310 by respondent No.1 Fateh, his legal representatives including his widow Akhlima, father Noor Mohd., mother Parvina, minor brother Azaz and Imrana minor sister brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondent No.1 Fateh driver, respondent No.2 Ashok Kumar owner, respondent No.3 Shri Ram General Insurance Company Ltd., Jaipur (Rajasthan) insurer of offending three wheeler auto rickshaw No.HR-47B-7310. That claim petition after contest by all the three respondents was allowed by Motor Accidents Claims Tribunal, Mewat, vide award dated 11.09.2014 and compensation of Rs.21,81,000/- was granted to the claimants along with interest @ 7.5% p.a., and costs of the petition.

Respondent No.3-Insurance Company feeling aggrieved by the said award has approached this Court by filing the present appeal praying that the award in question be modified since the same has not been passed in accordance with law by Motor Accidents Claims Tribunal, Mewat.

Notice of the claim petition was given to the respondents who put in appearance through counsel.

I have heard learned counsel for the appellant, learned counsel for the claimant/respondents whereas there is no representation on behalf of other respondents in the Court today.

The main thrust of the arguments of learned counsel for the appellant was that the tribunal has wrongly awarded 50% of actual salary of the deceased towards future prospects and rather, his monthly income has been taken to be on higher side. Whereas these contentions are being repelled by learned counsel for the claimants/respondents contending that the deceased was in regular job working as a skilled labourer getting Rs.9750/- per month as salary in terms of the salary certificate issued by his employer, BSR Engineering Works, Industrial Area, Bhiwari, District Alwar (Ex.PW2/B) and he being in a regular employment, 50% of the actual salary was rightly taken by the tribunal towards future prospects in terms of ratio of the Apex Court judgment **National Insurance**

Company Limited Vs. **Pranay Sethi and others**, 2017 (4) RCR (Civil) 1009.

After hearing learned counsel, I find that the tribunal by proper appraisal of evidence and correct interpretation of law has taken the monthly salary of deceased to be Rs.9750/- relying upon the salary certificate issued by his employer which was duly proved by PW-2-Mohd. Yamin who had appeared in the witness box, tendered his affidavit Ex.PW2/A mentioning that he was partner of BSR Engineering Works firm where the deceased was working as TNC operator for the last three years and was getting salary of Rs.9750/- per month. Thus, it cannot be said that an inflated amount has been taken as monthly salary of the deceased. Similarly from the testimony of this witness, it comes out that the deceased was in regular employment and not working on contractual or daily wages basis. Therefore, the tribunal had rightly taken the income of deceased to be Rs.9750/- per month and added 50% of that amount towards future prospects, since the age of deceased was less than 40 years.

The second contention of learned counsel for the appellant/insurance company has been that a sum of Rs.75,000/- has been awarded under conventional heads, whereas, in terms of authority **National Insurance Company Limited** Vs. **Pranay Sethi and others** (supra), a sum of Rs.70,000/- should have been awarded.

Learned counsel appearing for the claimants concedes this fact. No other point was put forward.

Accordingly, the appeal is allowed partly. The amount of Rs.75,000/- awarded to the claimants under conventional heads is reduced to Rs.70,000/-. Accordingly, the award amount stands reduced to Rs.21,76,000/-, however, the rate of interest and other terms & conditions including the apportionment among the claimants shall remain the same as directed in the original award. Under these circumstances, the parties are left to bear their own costs.

It has been pointed out by learned counsel for the claimants that during the pendency of the appeal, vide order dated 23.04.2015, the recovery of amount beyond Rs.15 lacs was stayed and Rs.15 lacs has since been deposited by the insurance company. The insurance company is directed to deposit the remaining amount for payment to the claimants at the earliest at the most within one month from today.

31.01.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No