IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 132 of 2016 (O&M)
XOBJC No.242-CII of 2017

Date of Decision: 31.01.2019

New India Assurance Company Ltd.

.......Appellant

Versus

Smt. Sarbani Gorai and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondents No. 1 to 5 and
for cross objectors.

Mr. Anil K. Sharma, Advocate
for respondents No. 6 and 7.

AVNEESH JHINGAN, J.(oral)

The award dated 25.8.2015 passed by the Motor Accident Claims Tribunal, Chandigarh, (for short 'the Tribunal') has been assailed by the insurer of truck bearing registration No.PB-65-N-7602 (for short 'offending vehicle') by filing the present appeal. The claimants have filed cross-objections seeking enhancement of compensation.

The insurer along with the appeal had filed an application for adducing additional evidence annexing verification report to the effect that the driving licence produced before the Tribunal was not valid. The grievance raised in the appeal of insurer is two fold, firstly that the Tribunal erred in not granting recovery rights as the driving licence was not valid at the time of accident and the second grievance raised is regarding quantum of compensation.

Learned counsel for the owner and driver-respondents No. 6 and 7 has filed reply to the application for additional evidence, with the reply, they has also filed report stating that the driving licence in question was valid on the date of accident.

The brief facts of the case are that a motor vehicular accident took place on 22.7.2014. The accident proved fatal for Parshant Gorai, aged 31 years. FIR No. 343 dated 22.7.2014 was registered at Police Station Sector 34, Chandigarh.

A claim petition was filed by the widow, two minor children and parents of the deceased under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The Tribunal held that the accident was caused due to rash and negligent driving of the offending vehicle. The owner, driver and insurer were held jointly and severally liable to pay the compensation.

Before the Tribunal it was proved that the deceased was earning ₹ 25,000/- per month. The Tribunal awarded 50% future prospects; 1/3rd deduction was made for self-expenses and multiplier of 16 was applied. The Tribunal awarded a sum of ₹ 51,25,000/- along with interest at the rate of 7.5% per annum. The amount awarded included ₹ 1 lakh for loss of consortium, ₹ 2 lakh for loss of love and affection and ₹ 25,000 for funeral expenses.

Heard learned counsel for the parties, perused the paper book and the relevant document produced by them.

One of the grievance raised in the appeal of the insurer is regarding quantum of compensation. Hence, the cross-objections and grievance of the insurer regarding quantum are being dealt with at the first instance.

Learned counsel for the insurer contends that Tribunal erred in awarding 50% future prospects instead of 40%. His further grievance is that no amount is to be awarded for loss of love and affection and the amount awarded under conventional heads is on the higher side.

Learned counsel for the claimants-respondents No. 1 to 5 contends that the deceased was survived by widow, two minor children and old parents. He argues that the Tribunal erred in not considering the mother as dependant and hence, wrongly made deduction of 1/3rd instead of 1/4th .

No other issue has been raised.

After hearing learned counsel for the parties and considering the documents produced by them, no interference is called for in the quantum of compensation awarded by the Tribunal.

The contention raised by the learned counsel for the insurer deserves acceptance. 40% future prospects were to be awarded as per the decision of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others (2017) AIR (SC) 5157*** and ***Hem Raj Vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480*** and no amount is to be awarded for loss of love and affection. The claimants were entitled to ₹ 70,000/- under the conventional heads.

On other hand the contention raised by learned counsel for the claimants has merit. The deceased was survived by two minor children, widow and a mother. Even for the sake of argument father is not considered to be the dependant upon the deceased, the mother was dependant and hence in consonance with the decision of the Supreme Court in ***Sarla Verma and***

others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21 1/4th deduction has to be made. The net result of above discussion would be that by reducing future prospects and by making ¼ deduction for self expenses the quantum of compensation to be awarded would remain almost the same.

Hence, the challenge of the insurer to the quantum of compensation is dismissed.

Similarly no interference is called for in the cross-objections filed by the claimants.,

The second grievance raised in the appeal of the insurer is that the driving licence of the driver of the offending vehicle was not valid at the time of accident. There are two driving licence reports being produced for the first time in the appeal one by the insurance company obtained under Right to Information Act, (for short 'RTI') stating that the licence was not valid at the time of accident. The said report has been produced along with the application. With the reply filed to the application, the driver and owner of the offending vehicle has annexed another report received under RTI. As per the said report, the driving licence was valid at the time of accident.

As both the reports are being produced for the first time and the argument of both the counsel is that the said document was not available at the time of passing of award, the issue only with regard to liability to pay compensation is remitted back to the Tribunal to be decided in accordance with law after affording opportunity to the insurer as well as the owner and driver to adduce evidence in support of their claims, if so desired by them. Both the reports produced before this Court be sent to the Tribunal.

The insurer, owner and driver are directed to appear before the Tribunal on 18.3.2019.

It is however, clarified that the issue with regard to lability to pay shall not effect the right of the claimants to get the compensation amount awarded to them.

Disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

31.01.2019
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No