IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

231 FAO-1364-2016 (O&M)

Date of decision: 10.05.2019

RELIANCE GENERAL INSURANCE CO LTD ... Appellant

Versus

CHHAYA RANI AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate for the appellant.
Mr. Sagar Aggarwal, Advocate for respondents No.1 to 5.
None for respondents No.6 and 7.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 22.01.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account death of Sachin Singhal in a motor vehicular accident that took place on 31.01.2015.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on issue No.1 and qua quantum of compensation. It is argued that the present is a case of contributory negligence of both the vehicles involved in the accident. To bring home his contention, it is argued that since occurrence was head on collision between the car driven by Sachin Singhal and offending tractor bearing No.HR-07Q-4429, negligence in causing the occurrence is liable to be attributed to the deceased as well.

With regard to quantum of compensation, it is argued that income of the deceased has been assessed at a higher rate and compensation allowed under conventional heads should be restricted to Rs.70,000/-.

Counsel representing the respondents No.1 to 5/claimants has supported findings of the Tribunal on issue No.1 and so also assessment of compensation made by the Tribunal.

The contention of appellant with regard to the present being a case of contributory negligence of the deceased, is patently misconceived and liable to be rejected when examined in the light of testimony of Roshan Lal, eye-witness to the occurrence. Roshan Lal PW2 tendered into evidence his duly sworn affidavit Ex.PW2/A by way of examination in chief. In para 1 of the affidavit, he has categorically deposed that the offending tractor came from the side of Brahm Sarover, Kurukshetra at very fast speed and in rash and negligent manner and turned the tractor towards side of the car of Sachin without giving any indicator or horn. Counsel for the insurance company has failed to point out any materials elicited in cross examination of Roshan Lal to challenge his testimony in this regard successfully. The driver of offending tractor did not appear in the witness box to counter case of the claimants as well as testimony of Roshan Lal without any tangible explanation and as such, an adverse inference is liable to be drawn against the respondents before the Tribunal. That being so, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has assessed income of the deceased on the basis of latest income tax return filed by the deceased himself. The claimants have also produced on record the income tax returns of the earlier years in order to prove that the deceased was an income tax assessee and holder of Permanent Account No.AYBPS0444B. As the Tribunal has assessed income of the deceased on the basis of authentic documentary evidence, I do not find any reason to interfere in findings of the Tribunal qua assessment of income of the deceased. However, Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.27,86,112/- [(13,820 x 12 x 16) + (40% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.28,56,122/- and compensation assessed by the Tribunal is reduced to the extent of Rs.6,54,104/- (35,10,216 - 28,56,122). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

10.05.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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