IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1876 of 2016 (O&M)
Date of Decision: 05.11.2019

United India Insurance Company Limited

...... Appellant

Versus

Sunita and others

..... Respondents

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CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Shubham Jain, Advocate,
for the appellant.

None for the respondents.

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<u>JAISHREE THAKUR, J.(ORAL)</u>

1. This is an appeal that has been filed by the Insurance Company seeking to challenge the amount of compensation that has been awarded to the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. In brief, the facts are that an accident took place on 18.03.2014 when an Innova car struck the car of Pawan Kumar which over turned. In the said car Rakesh was also travelling, who sustained injuries on account of the accident. Passersby who saw the accident got Pawan and Rakesh admitted in Sexena Hospital. Rakesh

succumbed to his injuries sustained in the accident during his treatment. A claim petition came to be filed stating that the accident took place on account of the negligent driving of the Innova car.

3. The claim petition was contested by respondent No.1 Tarsem Lal, driver and owner of the offending vehicle by stating that he has been falsely implicated in the case. On appreciation of evidence, the Tribunal came to hold the driver of Innova car bearing registration No. PB-23-B-0035 guilty of rash and negligent driving. This finding was returned on the statement given by Pawan Kumar, who was an eye witness and driver of the car, which was struck by the offending vehicle. He had categorically stated that it was due to the rash and negligent driving of respondent No.1 that resulted in the accident and death of Rakesh. Reliance was also placed upon the certified copy of report under Section 173 Cr.P.C. which reflected that it was respondent No.1 who was guilty of the said accident. The Tribunal allowed a sum of ₹ 19,05,400/- along with interest @ 7.5% per annum from the date of filing of the claim petition till actual realisation. The liability of the same was fastened upon the Insurance Company as the Innova car was duly insured and the driver was holding a valid driving licence. The Insurance Company only challenges the quantum that has been assessed by the Tribunal being on the higher side.

4. It is contended that there was no proof of the income of the deceased on the record and, therefore, the income could not have

been taken to be ₹ 8,100/- per month while also assailing the amount of ₹ 1,00,000/- that has been allowed on account of loss of consortium and a sum of ₹ 3,000/- towards transportation.

5. Notices have been issued upon the respondents and despite service no one has put in an appearance on their behalf. This matter is pending in Court since the year 2016 only on the question as to whether the Tribunal has erred in computing the compensation on the higher side. While issuing notice of motion, the Co-ordinate Bench of this Court had allowed an amount beyond ₹ 15 lacs to be disbursed against adequate security.

6. I have heard learned counsel for the appellant and with his assistance have perused the impugned judgment.

7. The Tribunal while taking into account that there was no documentary proof of income on the record, has taken the monthly income of the deceased to be ₹ 8,100/- per month as minimum wages in the State of Haryana for the year 2014-15. The accident took place on 18.03.2014 and as on that relevant date, the Minimum Wages as would be applicable to the State of Haryana, would be ₹ 6197.10 ps (rounded off ₹ 6200/-) for a skilled worker and, therefore, in the opinion of the Court, the Tribunal has erred in taking Minimum Wages as ₹ 8,100/- per month. The Tribunal has also erred in allowing increase of future prospects @ 50%. Even otherwise, as per the judgment rendered by Hon'ble Apex Court of India in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR***

(Civil) 1009 the Tribunal has erred in allowing an amount of rupees one lakh towards loss of consortium, an amount of rupees one lakh towards loss of care and guidance for minor children, which is not in consonance with the judgment relied upon. Therefore, the compensation would require to be recalculated as under :-

Sr. No	***Heads***	***Calculation***
(i)	Name of the deceased	Rakesh
(ii)	Date of accident	18.03.2014
(iii)	Age of the deceased	27 years
(iv)	Monthly income of the deceased	₹ 6,200/-
(v)	40% of (iv) is to be added towards future prospects	(₹ 6,200 +₹ 2,480) = ₹ 8,680/- per month
(vi)	1/3rd of (v) above deducted towards personal expenses	(₹ 8,680 - ₹ 2,893) = ₹ 5,787/- per month
(vii)	Compensation calculated after applying the multiplier of 17	₹ 5,787 x 12 x 17 = ₹11,80,548/-
(viii)	Conventional heads i.e. loss of consortium and funeral expenses etc.	₹ 70,000/-
	Total	₹12,50,548/-

8. In view of the above, the appeal of the Insurance company is allowed and the compensation awarded to the claimants is reduced from ₹ 19,05,400/- to ₹12,50,548 /-.

9. The award is modified and the appeal is allowed to the above extent.

05.11.2019 **(JAISHREE THAKUR)**
Satyawan **JUDGE**

Whether speaking/reasoned Yes.
Whether reportable No.