IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5620 of 2014 (O&M)

Date of Decision: 15.10.2019

Oriental Insurance Co.

..Appellant

Vs.

Anita Devi and others

..Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI

Present: Mr.Vinod Chaudhari, Advocate for the appellant.

Mr.Rakesh Dhiman, Advocate for respondent No.1.

RITU BAHRI, J.

This appeal has been filed by the Insurance Company against the award of the Tribunal dated 30.4.2014 whereby compensation of ₹6,30,000/- has been awarded to the claimant on account of death of her son Parvesh @ Monu s/o Bijender Singh in a motor vehicular accident which took place on 15.6.2012.

FACTS NOT IN DISPUTE

Brief facts of the case are that Parvesh @ Monu had died in a road accident which took place on 15.6.2012. He alongwith his uncle Samunder Singh was coming from Farrukh Nagar to their village on motor-cycle bearing registration No.HR-12J-9282. When they reached one kilometer ahead of Farrukh Nagar towards Jhajjar, a Tata Sumo bearing registration No.HR-46B-3317 came there, being driven by respondent No.1 in a rash and negligent manner and caused the accident with the motor cycle driven by deceased Parvesh, as a result of which Parvesh fell down on the road and sustained multiple serious injuries. He succumbed to his injuries on the way to Hospital whereas Samunder Singh, pillion rider on motor cycle, fell down on the *kacha* portion of the road and sustained simple injuries. With regard to the alleged accident, FIR No.81 dated 16.6.2012 was registered against the respondents at Police Station Farrukh Nagar. Consequently, claimant-mother filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that the accident occurred on account of rash and negligent driving of offending Tata Sumo by respondent No.1. This finding was rightly given on the basis of FIR (Ex.P7) and the deposition of PW4 Samunder Singh, who was the injured and eye witness of the accident.

The deceased was 19 years of age and being worked as a field boy in K.N.D. Infrastructure Pvt. Ltd. Gurgaon, was getting salary of ₹7000/-per month. The Tribunal had assessed income as ₹7000/- per month and as he was bachelor at the time of death, after deducting towards his personal expenses, his annual income was taken as ₹42,000/- per annum (₹3500x12) and after applying multiplier of 15, annual dependency of claimant came to be ₹6,30,000/- (42000x15), ₹10000/- towards loss of consortium, ₹5000/- for loss of estate and ₹5000/- for funeral expenses were also awarded. Hence, the claimant was found entitled to total compensation of ₹6,50,000/- alongwith interest @ 7.5% per annum from the date of filing of petition till its realization.

Feeling dissatisfied with the impugned award, the appellant-Insurance Company has preferred the present appeal.

Counsel for the appellant-Insurance Company has vehemently argued that it was an head of collusion and the deceased had also contributed to the accident and finding on issue No.1 that accident took place on account of rash and negligent driving by respondent No.1, requires to be modified as it was the case of negligent driving by the deceased.

A perusal of findings on issue No.1 shows that Insurance Company has led no evidence in the form of site plan to show that the deceased was travelling on the road side of the road and he had contributed to the accident. At the same time, after the accident FIR was registered and challan was presented against the driver u/s 173 Cr.P.C. and he was facing trial in FIR No.81 dated 16.6.2012. Even in the criminal trial, site plans are prepared but nothing has been led in evidence to show that the deceased was negligent in driving while the accident was caused. The second ground taken by the Insurance Company is that age of the deceased was below 19 years and he was a minor so he could not drive a vehicle. Even this aspect has been considered by the Tribunal that the deceased was 19 years of age and was working as a field boy in K.N.D. Infrastructure Pvt. Ltd., Gurgaon and this fact was further proved by claimant by examining PW2 Parveen Kumar, Accountant who proved the appointment letter of the deceased Ex.P2, receipts of the salary as Ex.P3 and Ex.P4 and attendance register of the deceased as Ex.P5 and Ex.P6.

REASSESSED 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 by respondent No.1. Finding of negligence has rightly been given by the Tribunal and it does not require any interference on that account. The grounds taken by the appellant-Insurance Company are rejected and the appeal filed by the Insurance Company is dismissed.

The compensation requires to be reassessed keeping in view the age of the deceased as 19 years and not taking the age of the claimant as 40 years and in view of the judgments passed by Hon'ble the Supreme Court in ***Magma General Insurance Company Ltd. Versus Nanu Ram alias Chuhru Ram and others, Civil Appeal No.9581 of 2018*** and ***National Insurance Company Limited Vs. Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017).*** While exercising power under Order 41 Rule 33 CPC and as the claimant has not chosen to file appeal, the compensation requires to be enhanced and is reassessed as under:

Sr.No.	***Heads***	***Calculations***
(i)	Income	₹7000x12=84,000/-per annum
(ii)	40% of (i) above to be added as future prospects	₹84,000+33600=1,17,600/-
(iii)	50% deducted as personal expenses	₹58,800/-
(iv)	After applying multiplier of 18	₹10,58,400/- (58,800x18)
(iv)	Funeral expenses	₹15,000/-
(v)	Loss of estate	₹15,000/-
(v)	Loss of Filial Consortium	₹40,000/-
(vii)	**Total Compensation awarded**	**₹11,28,400/-**
(viii)	**Enhanced amount of compensation**	**₹11,28,400-6,50,000= Rs.4,78,400/-**

The enhanced amount of compensation of **₹4,78,400/-** shall be payable within a period of two months from the date of receipt of certified copy of this order and the Insurance Company will make report to the Court regarding the payment of compensation to the claimant within three months.

The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing the claim petition, till its realisation, in view of the judgment of Hon'ble the Supreme Court in the case of ***Dara Singh @ Dhara Banjara Versus Shyam Singh Varma and others, Civil Appeal No.4528 of 2019***. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent.

(Ritu Bahri)
Judge

15.10.2019
Meenu

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No