IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross Objections No. 175-CII of 2016 and
FAO No. 44 of 2015 (O&M)
Date of decision : January 14, 2019

National Insurance Company Limited .....Appellant

Versus

Mohinder Pal @ Mohinder Singh and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sandeep Suri, Advocate
for the appellant.

Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the cross objectors/respondents No. 1 to 3.

Mr. H.S. Maan, Advocate for
Mr. Rajinder Goyal, Advocate
for respondents No. 4 and 5.

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LISA GILL, J.

This judgment shall decide FAO No. 44 of 2015 as well as cross objections No. 175-CII of 2016 filed by claimant-respondents No. 1 to 3.

Present appeal has been filed by National Insurance Company Limited claiming that the quantum of compensation awarded to the claimants No. 1 to 3 is excessive. Liability of the appellant - insurance company is not disputed.

Brief facts necessary for adjudication of the case are that on 03.11.2011, Ajay Kumar @ Ajay Singh (since deceased) alongwith Virender Kumar was going to their village Bhusthala from Radaur on a motorcycle bearing No. HR-05G-4020 driven by Virender Kumar. When they reached near Indri Chowk, Ladwa, offending vehicle driven in a rash and negligent manner by respondent No. 4 struck against the motorcycle. Both Ajay Kumar @ Ajay Singh and Virender Kumar both fell on the road and sustained injuries. Ajay Kumar @ Ajay Singh was shifted to PGIMER, Chandigarh where he succumbed to injuries on 09.11.2011.

Respondent Nos. 1 to 3 filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Ajay Kumar @ Ajay Singh on 03.11.2011 in a motor vehicle accident caused due to driving of the offending vehicle by respondent No.4 in a rash and negligent manner.

Learned Tribunal held the age of the deceased to be 24 years on the basis of the Matriculation Examination certificate (Ex.P6), which shows the date of birth of the deceased to be 04.03.1988. Income of the deceased was assessed as ₹5,400/- per month. 50% increment on account of future prospects was afforded. Multiplier of 18 was applied. 50% deduction was effected towards personal expenses. Total dependency was calculated at ₹8,74,000/-. A sum of ₹ 25,000/- was afforded on account of loss of love and affection, funeral expenses and loss of estate. Learned Tribunal awarded a sum of ₹8,99,800/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till date of actual realisation of the award.

It is reiterated that liability of the appellant - insurance company is not disputed. Challenge is, however, raised in respect to the quantum of compensation. Learned counsel for the appellant – insurance company submits that income of the deceased has been wrongly assessed as ₹5400/- per month on the basis of Deputy Commissioner's rates, Kurukshetra. Minimum wages in the State of Haryana at the time of accident were ₹4,643/- for an unskilled labourer. Moreover, increment of 50% instead of 40% has been afforded on account of future prospects. Compensation should, thus, be reduced. It is, thus, pleaded that present appeal be allowed.

Learned counsel for respondents No. 1 to 3/cross objectors while opposing the said arguments vehemently argues that the deceased was a student of Bachelor of Arts pursuing his second year. He had cleared his First year and he cannot be equated with an unskilled labourer. In fact the learned Tribunal has erred in assessing income of the deceased as ₹5,400/- as it is on the lower side. Compensation under the conventional heads, it is submitted, is meagre. It is, thus, prayed that this appeal be dismissed and cross objections be allowed.

Heard learned counsel for the parties.

It is not in dispute that Ajay Kumar @ Ajay Singh lost his life due to injuries suffered by him in the accident caused due to rash and negligence driving of respondent No. 4. Liability of the insurance company is not in dispute. The deceased was admittedly 24 years old at the time of the accident. His date of birth is 04.03.1988 as per the Matriculation Examination certificate (Ex.P6). It is not denied by learned counsel for the appellant that the deceased at the time of his death was pursuing B.A. (IInd year) having successfully completed his first year. In this view of the matter, income of the deceased cannot be assessed while taking him to be an unskilled labourer. It is a matter of record that the minimum wages as notified in the Minimum Wages Act for a skilled upper labourer in the State of Haryana at the time of accident was ₹5,293/- per month, therefore, it is considered appropriate to assess income of the deceased, who was admittedly a Matriculate and pursuing Bachelor of Arts, to be ₹6,000/- per month . As per the guidelines laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase in income on account of future prospects at the rate of 40% (₹2400/-) instead of 50% is afforded in view of the age of the deceased being 24 years, which takes the income of the deceased to ₹8,400/- per month. 50% deduction is to be applied as the deceased was a bachelor, thereby rendering income of the deceased to be ₹4200/- per month (8400-4200). Multiplier of 18 is correctly applied. Annual dependancy of the claimants is, therefore, assessed as ₹9,07,200/- (₹4200x18x12). The claimants are entitled to ₹15,000/- for funeral expenses as well as ₹15,000/- for loss of estate. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and others** (Civil Appeal No. 9581 of 2018), claimants/respondents No. 1 and 2 i.e. parents of the deceased are entitled to ₹40,000/- each on account of loss of filial consortium. Accordingly, compensation awarded to the claimants – respondents No. 1 to 3 is re-worked as under:-

Loss of dependency (₹4200x18x12)	₹9,07,200/-
Loss of filial consortium (40,000 x2)	₹80,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹10,17,200/-

The claimant/respondents shall, however, be entitled to interest @ 7.5% per annum on the amount yet to be disbursed from the date of filing of the petition till realisation. It is clarified at this stage that the claimant/respondents shall not be entitled to any interest on the period of 496 days as per the specific undertaking of the claimant/respondents at the time of condonation of delay in filing of the cross objections.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, the present appeal as well as the cross objections are disposed of.

(Lisa Gill)
Judge

January 14, 2019
rts

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