IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5235-2015(O&M)
Date of decision:-10.5.2019

Cholamandalam MS General Insurance Company Ltd.

...Appellant

Versus

Indu Kaushal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajneesh Malhotra, Advocate
for the appellant.

Mr.S.P. Arora, Advocate
for respondents No.1 and 2.

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H.S. MADAAN, J.

Petitioners/claimants Indu Kaushal – wife aged about 52 years and Nikhil Arun Kaushal - son of Sh.Harbans Lal Kaushal, who lost his life in a motor vehicular accident had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Hasan Mohammed – driver, Hasam Khan – owner and Cholamandalam MS General Insurance Company – insurer of dumper having registration No.RJ-02GA-4414 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.40 lacs.

As per the case of the claimants on 17.12.2013 at about 11:00 a.m. deceased Sh.Harbans Lal Kaushal was going from Gurgaon to Tauru in his Alto car having registration No.DL-2CAG-5877; that his son-in-law Sh.Gaurav Bhagi along with his father Sh.Ramesh Kumar were also going from Gurgaon to Tauru for some personal work in their Wagon-R car having registration No.DL-9CJ-4404 and they were following the car of Sh.Harbans Lal Kaushal; that when they had reached near Bilaspur Road, Gurgaon Filling Station near village Jhamubas, P.S. Tharu, respondent No.1 – Hasan Mohammed driving the offending vehicle in a rash and negligent manner at a very high speed hit the Alto car being driven by Sh.Harbans Lal Kaushal while trying to overtake the vehicle in a negligent manner; that the offending vehicle dragged the Alto car and fell into a pit on the road side; as a result of the mishap, Sh.Harbans Lal Kaushal suffered multiple injuries and died on the spot; that Sh.Gaurav Bhagi informed the police and lodged FIR No.509 dated 17.12.2013; that the driver of the offending vehicle had run away from the spot after the accident. According to the claimants, the deceased was working as a Financial Incharge with Prime Time Realcon Pvt. Ltd., Gurgaon drawing monthly salary of Rs.42,500/-; that he was aged about 55 years at the time of his death; that earlier the deceased was working as a Chief Manager, UCO Bank, Gurgaon and has retired on 7.5.2013 and at the time of his retirement he was drawing salary of Rs.55,000/-; that he was an income tax payee; that after his retirement from the bank, he was engaged by Prime Time Realcon Pvt. Ltd. as a Financial Advisor; that the deceased was very energetic and he has left behind his widow, who is a housewife and a son, who is a student doing Diploma in Mass Communication from S.D. College, Chandigarh and that both the claimants were fully dependent upon the income of the deceased.

On notice all the three respondent appeared. Respondents No.1 and 2 had filed a joint written statement whereas respondent No.3 came up with a separate written statement. In the joint written statement filed by respondents No.1 and 2, they challenged the maintainability of the claim petition questioned the locus standi of the claimants to bring the petition in question further alleging that no cause of action had arisen to the claimants to bring the claim petition and they had not approached the Tribunal with clean hands and had concealed material facts; furthermore the petition was bad for misjoinder and non-joinder of the necessary parties. On merits, such respondents denied that Sh.Harbans Lal has lost his life in the alleged accident caused due to rash and negligent driving of the offending vehicle by respondent No.1. According to such respondents, the offending vehicle was wrongly involved in this case and a false FIR was registered by the petitioners in collusion with the police to get the compensation. Such respondents prayed for dismissal of the claim petition.

In the written statement filed on behalf of respondent No.3, it has raked up an objection that the driver of the offending vehicle was not holding a valid and effective driving licence at the time of accident. Controverting the remaining assertions, such respondent denied its liability to pay any compensation to the claimants. In the end, such respondent also prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident had taken place on 17.12.2013 at about 11:00 a.m. due to rash and negligent driving of vehicle bearing No.RJ-02GA-4414 driven by respondent No.1 resulting into death of Shri Harbans Lal Kaushal, as alleged? OPP.
2. If issue No.1 is proved, then what amount of compensation the petitioner is entitled to and from whom? OPP.
3. Whether the respondent no.1 was not holding a valid and effective driving licence at the time of accident? OPR(3).
4. Whether the respondents have violated the terms and conditions of the Insurance Policy? OPR(3).
5. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.1 Smt.Indu Kaushal got recorded her statement as PW1 besides examining Sh.Gaurav Bhagi as PW2 and Sh.S.K. Mishra as PW3.

On the other hand, respondents No.1 and 2 tendered in evidence copies of permit Ex.R1 and Ex.R2.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners, issue No.2 in favour of the petitioners, issues No.3 and 4 against respondent no.3. Resultantly, while allowing the claim petition partly, the Tribunal awarded a compensation of Rs.44,40,200/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization to the petitioners payable by all the respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

This award left the respondent No.3 - insurance company aggrieved and it has approached this Court by way of filing the present appeal praying that the same be accepted, the impugned award be set aside and the appellant – insurance company be absolved of its liability to pay compensation to the claimant.

Notice of the appeal was given to respondents. However, only respondents No.1 and 2 put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned Tribunal on the basis of evidence adduced before it has taken the age of the deceased to be 55 years at the time of his death and his monthly salary to be Rs.42,500/- from his employer Prime Time Realcon Pvt. Ltd., Gurgaon. The Tribunal has relied upon the testimony of PW3 Sh.S.K. Mishra, Sr. Accountant, Prime Time Realcon Pvt. Ltd., Gurgaon, who had brought the appointment letter of deceased Harbans Lal as Ex.P2, salary sheets for the months of October 2013 to December, 2013 and voucher for payment as Ex.P3 to Ex.P6. The Tribunal has observed that in the salary sheets of deceased Ex.P3 to Ex.P5, salary drawn by him is mentioned to be Rs.42,500/- and the respondents had not led any evidence in rebuttal. The Tribunal has taken age of the deceased to be 55 years referring to such age as mentioned in the postmortem report Ex.P10. The claimants are respondents before this Court and they themselves have placed on record matriculation examination certificate of the deceased showing his date of birth to be 18.6.1957 and copy of his PAN car showing that very date of birth. The accident had taken place on 17.12.2013, which means that the deceased was aged about 56 ½ years at the time of accident. The Tribunal has used the multiplier of 11.

In terms of the ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** when the deceased was in the age group of 56 to 60 years, then multiplier of 9 is to be applied. Thus the Tribunal has applied higher multiplier than it should have done.

If we take monthly income of the deceased to be 42,500/-, annual income comes to Rs.5,10,000/-(42500 x 12), after deducting tax Rs.4,95,580 (5,10,000 – 14420).

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009,*** in such an eventuality 15% of the amount is to be added towards future prospects. Doing that the annual income of the deceased comes out to Rs.5,69,917/-, monthly income of the deceased comes to Rs.47,493/-.

In terms of the ratio of authority ***Smt.Sarla Verma and others*** (supra) deduction of 1/3rd of the amount towards self expenses is to be made. Doing that the dependency of claimants comes out to Rs.31,662/- per month, annual dependency comes out to Rs. 31,662 x 12 = Rs.3,79,944/-.

In view of the above discussion in terms of the ratio of authority ***Smt.Sarla Verma and others*** (supra), multiplier of 9 should be used. Doing that the compensation payable comes out to Rs.3,79,944 x 9 = 34,19,496/-.

In view of the ratio of authority ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 34,19,496 + 70,000 = 34,89,496/-.

The Tribunal has wrongly awarded compensation of Rs.44,40,200/-. The same is reduced to Rs.34,89,496/-. The claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.34,89,496/-. Other terms and conditions in the original award shall remain the same. Amount if paid in excess be refunded by the claimants at the earliest.

With such modification, the appeal is allowed partly with costs.

10.5.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No