IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-9230-2014(O&M)
Date of decision:-3.10.2019

Oriental Insurance Company Ltd.

...Appellant

Versus

Nirmala Devi and others

...Respondents

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

Present: Mr.Jagjit Singh Chatrath, Advocate for
Mr.Ashwani Talwar, Advocate
for the appellant.

Mr.Parvez Chugh, Advocate
for respondents No.1 to 5.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that on account of death of Rajinder Kumar in a motor vehicular accident, which took place on 26.6.2013 in the area of Police Station Kabarwala between village Malout and Virk Khera, while he was pillion riding new motorcycle Bajaj Discover having engine No.JBZPDA/10536, Frame No.MD2A14A21DPA/82112 being driven by respondent No.2 Pawan Kumar, his legal representatives, namely, his widow – Smt.Nirmala Devi, aged 34 years, minor sons – Rishikesh Kumar, aged 14 years, Bharat Kumar, aged about 13 years, Sunil Kumar aged about 10 years and mother – Smt.Phoolwati, aged about 50 years had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against respondents i.e. Oriental Insurance Company Limited – insurer and Pawan Kumar – driver of the new motorcycle mentioned above.

Notice of the claim petition was given to both the respondents. Respondent No.1 – insurance company had put in appearance through counsel, whereas respondent No.2 did not appear despite service, as such he was proceeded against ex-parte.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, vide Award dated 8.8.2014, learned Motor Accidents Claims Tribunal, Sri Muktsar Sahib(hereinafter referred to as the Tribunal) allowed the claim petition and awarded compensation of Rs.5,52,000/- to the claimants along with interest @ 6% per annum from the date of filing of the petition till realization of the amount, payable by both the respondents jointly and severally. The directions with regard to apportionment of the awarded amount are given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside and the claim petition be dismissed.

Notice of the appeal was issued to the respondents and respondents No.1 to 5 (claimants) have put in appearance through counsel.

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

Learned counsel for the appellant – insurance company has contended that the deceased himself was owner of the vehicle, as such he being insured was not entitled to get any compensation. Whereas this argument is refuted by learned counsel for the claimants contending that the deceased had died in a motor vehicular accident arising out of use of a new motorcycle, which was being driven by respondent No.2 – Pawan Kumar, as such the legal representatives of deceased are entitled to get compensation. He has further contended that before the Tribunal, the insurance company had taken up a plea that it was deceased, who was driving the motorcycle while respondent No.2 Pawan Kumar was a pillion rider.

After hearing the rival contentions, I find that the Tribunal in para No.14 of the award has observed that in terms of Section 163-A of the Motor Vehicle Act, the Tribunal is to see that the accident of deceased had taken place by use of motorcycle and not to assess the rash and negligent driving of the respondent – driver and sufficient evidence was there in this case to show that Rajinder Kumar had died in an accident, which took place out of use of newly purchased motorcycle when it struck against the stray animal lying dead on the road and it has further come in evidence that respondent No.2 Pawan Kumar was driving the motorcycle while deceased was a pillion rider and that Rajinder Kumar had received serious injuries and he was brought to Civil Hospital, Muktsar from where he was referred to GGS Medical College, Faridkot, where he died; that DDR No.8 dated 29.6.2013, copy Ex.PC was lodged at Police Station Kabarwala.

I do not find anything wrong with the observations recorded by the Tribunal finding the claimants to be entitled to get compensation under Section 163-A of the Motor Vehicles Act. For the purpose of assessing compensation, the Tribunal has taken age of deceased to be 35 years as per his age entered in the postmortem report, monthly income of deceased has been taken to be Rs.3,300/-. The annual income of the deceased was assessed as Rs.40,000/-. However, the Tribunal has fallen in error in making deduction for personal expenses to the extent of 20% only in light of the guidelines laid down in Apex Court authority ***Sarla Verma and others Vs. Delhi Transport Corporation and another, 2009(3) Recent Civil Reports 77***.

That judgment relates to claim petition under Section 166 of the Motor Vehicles Act and not under Section 163-A of the Motor Vehicles Act. Petition under Section 163-A of the Motor Vehicles Act is to be decided as per the structured formula, which provides that 1/3rd of the amount is to be deducted in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Doing that the monthly dependency of the claimants comes to be Rs.2,200/- and annual dependency to be Rs.26,400/-. The Tribunal has used multiplier of 16, which is as per schedule. Therefore, the compensation payable comes out to Rs.4,22,400/-(26400 x 16).

The Tribunal again fell in error in awarding Rs.40,000/- towards conventional heads on account of funeral expenses, loss of estate, loss of consortium, love and affection, when as per the second schedule, the claimants were entitled to Rs.2,000/- as funeral expenses, widow to get Rs.5,000/- on account of loss of consortium and Rs.2,500/- under the head loss of estate.

Doing that, the total compensation payable comes out to Rs.4,31,900/-(4,22,400 + 2000 + 5000 + 2500).

The Tribunal has wrongly awarded compensation of Rs.5,52,000/-. The same is reduced to Rs.4,31,900 /-. The claimants 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.4,31,900 /-. Other terms and conditions in the original award shall remain the same. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company at the earliest otherwise the appellant insurance company would be entitled to recover it by way of filing an execution application before the Tribunal.

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

3.10.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No