IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.9514 of 2014(O&M)
Date of Decision: 12.09.2019

Oriental Insurance Company Limited Ltd. ....Appellant

Vs.

Kamajit Kaur and Others ....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Vinod Chaudhary, Advocate, for the appellant.

Mr.N.K.Vadhera, Advocate, for the respondents.

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DR. RAVI RANJAN, J. (Oral Judgment)

This appeal has been preferred by the appellant/Insurance Company assailing the Judgment and Award dated 07.07.2014 passed by Motor Accident Claims Tribunal (Adhoc), Fast Track Court, Gurdaspur, holding that the deceased-Paramjit Singh, who was aged about 28 years and was a labourer by profession, lost his life in a motor-vehicular accident, thus, on a claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 (hereinafter to be referred to as “the Act”) the claimants would be entitled for compensation amount of Rs.7,03,200/- along with interest @ 7.5% per annum, to be calculated from the date of filing of the claim application till the actual realization of the amount which was to be paid by the insurance company which would be at liberty to recover the amount from the owner of the offending vehicle if permissible under law.

The factum of accident leading to death of Paramjit Singh is not questioned here and, since the petition was filed under Section 163A of the Act, there was no question of recording a finding regarding any wrongful act of neglect or default of the owner or the driver of the vehicle as per under Section 163-A(2). As such, the challenge has been made by the insurance company on limited ground that, though the claim petition was filed under Section 163-A, the Tribunal, in place of following the structured formula for coming to the compensation amount as provided under the 2nd Schedule of the Act, has calculated the compensation amount and also added certain amount under different heads as if it was deciding a claim case under Section 166.

Learned counsel for the appellant has submitted that it is startling that, though a petition filed under Section 166 of the Act by some other claimants arising out of the same accident, it could not be proved that the accident was result of the rash and negligent driving of the driver, in place of rejecting the present claim petition, the same has been allowed.

However, this limb of argument raised on behalf of the appellant is noted only to be rejected since, as per the provisions contained in Section 163-A(2), for deciding a case under the aforesaid provision, the negligence of the offending driver or owner or anybody was not required to be proved.

It is next urged that in place of calculating the compensation amount as per the table given in the schedule to be based on a structured formula, the Tribunal, after selecting a multiplier of 18, has multiplied it with the annual income for calculation of the compensation amount which ought not have been done. Similarly, Rs.20,000/- has been allowed as against the head of funeral expenses which could have only be Rs.2,000/-. Similarly, Rs.1 Lakh was allowed for loss of love and affection and care and support which could have been Rs.5,000/- only.

Learned counsel for the respondent is not in a position to controvert the aforesaid submission raised on behalf of appellant that calculation should have been made on the basis of the table provided under Schedule 2 of the Act based on structured formula.

So far the income of the deceased is concern, AW-1, i.e., the mother of the deceased has stated that he was earning Rs.3200/- per month. Save and except such assertion, there is no documentary proof of such earning. However, considering the deceased to be a labourer, the aforesaid was accepted as earning. So far the deduction of personal expenditure of the deceased while calculating the annual loss of income is concerned, it has been contended on behalf of appellant that as per the structured formula, $1/3^{rd}$ of the income has to be deducted. Learned counsel for the respondent-claimants has submitted that as per the decision of the Apex Court rendered in **New India Assurance Company Limited Vs. Gopali and Ors. 2012 AIR(SC) 3381,** in view of the admitted fact that the deceased was very poor and claimants were dependent upon him, deduction should be less than $1/3^{rd}$, i.e., maximum of 15% or 10% of the income. However, this limb of argument raised on behalf of the respondents would not be acceptable for the reason that the view which has been expressed by the Hon'ble Supreme Court in **New India Assurance Company Limited (supra)** was with respect to a claim petition filed under Section 166 of the Act and not under Section 163-A. Thus, in my view, $1/3^{rd}$ of the compensation amount has to be deducted towards personal expenses of the deceased as provided in Schedule-II. Now the next question would be that admittedly, deceased being 28 years of the age at the time of his death, the multiplier has to be 18 but even assuming Rs.3200/- per month income, annual income would come to Rs.38,400/-. In that case, it would be very difficult to accept the annual income to be Rs.36,000/- because it would be more nearer to Rs.40,000/- specially when per month income accepted is much less than even the minimum wage which was available w.e.f. 01.09.2010 to the unskilled labourers of the State of Punjab, that being Rs.3692/- Thus, in my considered view that annual income for coming to just and proper compensation even in consonance with the structured formula has to be taken as Rs.40,000/-

Accordingly, the impugned Award is modified and recalculated as under:

Considering the admitted age of the deceased to be 28 years and multiplier selected as 18 and considering the annual income of Rs.40,000/-, the total compensation amount comes to Rs.7,20,000/- as per second schedule of the Act. After deducting 1/3rd of the compensation amount, the same would be roughly come to Rs.4,80,000/-. Now funeral expenses of Rs.2,000/- and loss of estate of Rs.2500/-, medical expenses to the tune of Rs.15,000/- has to be added in it. Against the head of consortium, nothing is to be granted because as per the structured formula only Rs.2000/- is to be allowed and that too in case one of the beneficiaries is spouse but in the present case, the beneficiaries are the parents of the deceased. Thus, the total compensation amount comes to Rs.4,99,500/-.

Thus, in my considered view the aforesaid would be the compensation amount as per structured formula provided in the 2nd Schedule of the Act. However, the interest imposed is kept intact. It has lastly been contended on behalf of appellant/Insurance Company that recovery rights should have been given to it. The Tribunal has held that the insurance company would be at liberty to recover the compensation amount from the owner, if, it is permissible under law. However, since this issue has been raised, it has to be answered by this Court. In my view, no recovery right can be given to the insurance company as admittedly the concerned vehicle is insured and specially when there is no requirement to prove the negligence under Section 163-A of the Act. Thus, the insurance company would be under obligation to indemnify the owner.

In the result, this appeal stands allowed to the extent as indicated above.

Before parting with the matter, I must indicate that no other grounds were raised by the parties at the time of hearing save and except those which have already been considered as above.

(DR. RAVI RANJAN)
JUDGE

12.09.2019
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No