IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 212

FAO-7404-2016 (O&M)
with XOBJ-54-CII-2017
Date of decision : 08.03.2019

New India Assurance Co. Ltd. ..... Appellant

VERSUS

Sunita and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R. C. Kapoor, Advocate, for the appellant.

Ms. Gurdeep Kaur, Advocate, for
Mr. S. K. Sharma, Advocate,
for respondents No. 1 to 3/cross objectors.

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DEEPAK SIBAL, J. (ORAL)

Through the present appeal the appellant-Insurance Company claims that through the impugned award dated 11.08.2016, passed by the Motor Accident Claims Tribunal, Rohtak (for short, the Tribunal), excess compensation has been granted to respondents No. 1 to 3/claimants. Cross objections have also been filed by respondents No. 1 to 3/claimants seeking therein enhancement in the awarded compensation. Both the appeal as also the cross objections are being disposed of through the present order.

The facts, in brief, which are required to be noticed for adjudicating upon the present appeal as also the cross objections are that on 19.11.2015 Kuldeep (now deceased) alongwith one Arvind and his father Mahavir was going on a tractor. At about 6:30 A.M. when they reached ahead of Jassia Minor on the GT road, a canter/truck bearing registration No. GJ-12AZ-9912 (for short, the offending vehicle) struck the tractor trolley attached to the tractor being driven by Kuldeep, resulting in Kuldeep's death at the spot. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. The Tribunal after concluding that the offending vehicle was being driven in a rash and negligent manner, assessed the payable compensation, the reduction in which is sought by the appellant and the enhancement in which is sought by respondents No. 1 to 3/cross-objectors.

Learned counsel for the appellant-Insurance Company submits that the deceased's income has been wrongly assessed by the Tribunal @ ₹9,000/- per month as there was no evidence on the record to support such income. He further submits that "future prospects" @ 50% granted by the Tribunal on the deceased's assessed income as also ₹2,25,000/- under the conventional heads of "loss of love and affection", "loss of consortium" and "funeral expenses" are against the law laid down by the Hon'ble Apex Court in "*National Insurance Company Limited vs. Pranay Sethi and others*" (2017) 16 SCC 680. According to him "future prospects" @ 40% and a cumulative sum of ₹70,000/- could have only been granted.

Learned counsel for respondents No. 1 to 3/cross objectors submits that there was overwhelming evidence on record in the form of the statements of PW-1 Pale Ram, PW-2 Krishan and PW-6 Ranveer to prove that the deceased was doing the work of earth filling as also selling eucalyptus trees and was thus earning ₹25,000/- per month. Further, PW-3 Zile Singh while appearing before the Tribunal had deposed that the deceased also owned a tractor. The passbook of the bank account of the deceased had also been exhibited before the Tribunal which contained several entries proving the monthly earnings of the deceased to be ₹25,000/-.

Learned counsel for respondents No. 1 to 3/cross objectors very fairly submits that "future prospects" as also compensation under the conventional heads is to be granted as per the law laid down by the Hon'ble Apex Court in "*Pranay Sethi's"* case (supra).

A perusal of the statements of PW-1 Pale Ram, PW-2 Krishan and PW-6 Ranveer show that the deceased was doing the work of earth filling and was also dealing with the sale/purchase of eucalyptus trees.

After going through the statements of the aforesaid witnesses and the passbook of the bank account of the deceased as also the statement of PW-3 Zile Singh who had proved that the deceased owned a tractor, the income of the deceased is assessed @ ₹10,000/- per month.

As per the law laid down by the Hon'ble Apex Court in "*Pranay Sethi's"* case (supra) the grant of 50% on account of "future prospects" on the assessed income of the deceased is ordered to be reduced to 40%. The amount granted under the conventional heads of "loss of love and affection", "loss of consortium" and "funeral expenses" is also directed to be reduced from Rs.2,25,000/- to Rs.70,000/-.

The appeal filed by appellant-Insurance Company as also the cross objections filed by respondents No. 1 to 3/claimants are disposed of in the above terms.

No costs.

08.03.2019 [DEEPAK SIBAL]
shamsher JUDGE

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