IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2638 of 2017 (O&M)
Date of decision : March 20, 2019

Oriental Insurance Company Ltd. .....Appellant

Versus

Pooja and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harsh Aggarwal, Advocate for the appellant.

Mr. Rajesh Dhankhar, Advocate for respondents No. 1 to 5.

Mr. Ajay Vijarania, Advocate for respondents No. 6 and 7.

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LISA GILL, J.

C.M. No. 8738-39-CII of 2017

Heard.

For the reasons mentioned in the applications as well as arguments addressed, delay of 193 days in re-filing and 38 days in filing of the present appeal is condoned.

Applications are disposed of.

FAO No. 2638 of 2017

Notice of motion.

Mr. Rajesh Dhankhar, Advocate accepts notice on behalf of respondents No. 1 to 5 and Mr. Ajay Vijarania, Advocate accepts notice on behalf of respondents No. 6 and 7.

Present appeal has been filed by Oriental Insurance Company Ltd. challenging award dated 29.02.2016 passed by the learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the

'Tribunal').

Brief facts necessary for adjudication of the case are that the claimants/respondents No. 1 to 5 filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Vikram on 01.02.2015 in a motor vehicle accident caused due to driving of the offending vehicle, i.e. TATA-407 bearing registration No. HR-61A-8737 by Firoz - respondent No. 6 in a rash and negligent manner. The claimants are the widow, three minor children and father of the deceased - Vikram.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 01.02.2015 due to rash and negligent driving of the offending vehicle, i.e. TATA-407 bearing registration No. HR-61A-8737 by Firoz - respondent No. 6. Learned Tribunal awarded a sum of ₹16,58,808/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Income of the deceased was assessed as ₹5,900/- per month. 50% increment was afforded on account of future prospects. Deduction of 1/4th was effected, keeping in view the number of dependants. Multiplier of 18 was applied as the deceased was 23 years old at that time. Additionally, a sum of ₹1,00,000/- on account of loss of consortium was awarded and a sum of ₹1,00,000/- on account of loss of love and affection besides a sum of ₹25,000/- on account of funeral expenses.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellant – insurance company submits that there is no dispute regarding income of the deceased assessed as ₹5,900/- per month by the learned Tribunal. However, 50% increment on account of loss of future prospects should be reduced to 40% in terms of judgment of Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**. Furthermore, compensation under the conventional heads is stated to be excessive as well. It is, thus, prayed that compensation awarded to the claimants be reduced accordingly.

Learned counsel for the respondents submits that there is no scope for any reduction in the awarded amount. Thus, it is prayed that this appeal be dismissed and impugned award dated 29.02.2016 be upheld.

I have heard learned counsel for the parties and have gone through the available file.

A perusal of the file reveals that Vikram lost his life in a motor vehicle accident, which took place on 01.02.2015 caused due to the rash and negligent driving of TATA-407 bearing registration No. HR-61A-8737 by respondent No.6. No serious challenge has been raised qua this finding, which is otherwise borne out from the evidence on record. It is not disputed that the deceased was 23 years old at the time of the accident. Income of the deceased as assessed by the learned Tribunal to be ₹5,900/- per month is accepted by the appellant. Income of the deceased, as assessed by the learned Tribunal, is thus upheld as ₹5,900/- per month. In view of the guidelines of the Hon'ble Supreme Court in the case of **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, increase on account of future prospects has to be afforded at the rate of 40% instead of 50% (₹2360/-), as the deceased was 23 years old at the time of accident, which takes income of the deceased to ₹8260/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of

Smt. Sarla Verma and others Versus Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77, deduction of 1/4th is to be applied as number of dependants is five (5), thereby rendering income of the deceased to be ₹6195/-(8260-2065). Applying a multiplier of 18, dependancy of the claimants is assessed as ₹13,38,120/- (₹6195x12x18). The claimants are also entitled to ₹15,000/- each for funeral expenses (instead of ₹25,000/-) and loss of estate besides the claimant widow is entitled to ₹40,000/- on account of loss of consortium (instead of ₹1,00,000/-). Claimant – respondent No. 5 i.e. father of the deceased is entitled to a sum of ₹40,000/- on account of loss of filial consortium. Claimants – respondents No. 2 to 4 i.e. minor children of the deceased are entitled to consolidated sum of ₹40,000/- on account of loss of parental consortium. Reference in this regard can gainfully be made to the judgments of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in FAO No. 2110 of 2016 and other connected matters.

Claimants/respondents No. 1 to 5 are, thus, entitled to total compensation of ₹14,88,120/- instead of ₹16,58,808/- detailed as under:-

Loss of dependency (₹6195x12x18)	₹13,38,120/-
Loss of spousal consortium	₹40,000/-
Loss of parental consortium	₹40,000/-
Loss of filial consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹14,88,120/-

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. Rate of interest on the amount yet to be disbursed from the date of filing of the petition till realisation as awarded by learned Tribunal is maintained.

With the abovesaid modification in the amount of compensation, present appeal is partly allowed.

(Lisa Gill)
March 20, 2019 **Judge**
rts

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