

235(1/2)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. FAO No.3607 of 2017 (O&M)
Date of Decision: 24.01.2019

Reliance General Insurance Company Ltd.
Appellant

Versus

Ms. Priyanka Das and others
Respondents

2. FAO No.5444 of 2017 (O&M)

Ms. Priyanka Das
Appellant

Versus

Suresh and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. V.K. Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the appellant [in FAO No.3607 of 2017]
for respondent No.3 [in FAO No.5444 of 2017].

Mr. A.S. Sidhu, Advocate
for the appellant [in FAO No.5444 of 2017]
for respondent No.1 [in FAO No.3607 of 2017].

Ms. Sona Kaur, Advocate for
Mr. Ashish Yadav, Advocate
for respondents No.2 and 3 [in FAO No.3607 of 2017]
for respondents No.1 and 2 [in FAO No.5444 of 2017].

Mr. A.S. Salar, Advocate
for respondents No.4 and 5 [in both appeals].

AVNEESH JHINGAN, J (Oral):

The award dated 03.04.2017 passed by the Motor Accident Claims Tribunal, Gurugram [for brevity 'the Tribunal'] in MACT Petition No.9 of 2014 has been assailed in two appeals. One appeal has been filed by the Insurer of Truck bearing registration No. HR-55-2812 [hereinafter referred to as 'offending vehicle'] and another by the claimant. Since both the appeals arise from the same award and same accident, both are being disposed of by a common order.

The insurer of the offending vehicle is aggrieved of quantum of compensation whereas the claimant has raised grievance with regard to share of compensation apportioned to her.

The driver, owner and insurer (i.e. Reliance General Insurance Company Ltd.) were arrayed as respondents No.1 to 3 and parents of the deceased were proforma respondents No.4 and 5 before the Tribunal.

The facts necessary for adjudication of the present appeal are that on 10.04.2011, Priyanka Das alongwith Shushant Prabhakaran was going on motorcycle which was being driven by Shushant Prabhakaran. On their way, the motorcycle was struck by a rashly and negligently driven offending vehicle. As a result, both the riders of the motorcycle fell down. Shushant Prabhakaran died at the spot and Priyanka Das sustained grievous injuries. As a result of the accident, she lost her vision. FIR No.198, dated 10.04.2011

was registered at Police Station Gadmukteshwar.

A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'], pleading that the deceased was 33 years old at the time of accident. He was working as a Manager, Contact Centre in M/s Ericson India Pvt. Ltd., Ericson Forum, DLF Cyber City, Gurgaon. His annual income was assessed as ₹8,94,100/-. The Tribunal after considering the facts and appreciating the evidence on record held that accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation.

The Tribunal awarded 50% future prospects, ½ deduction for self-expenses was made and multiplier of '16' was applied. The Tribunal awarded compensation of ₹82,56,152/- alongwith interest @ 7.5% per annum.

Before the Tribunal, the issue was raised that as to whether Priyanka Das was a legally wedded wife of the deceased or not. The Tribunal held that it was not proved that she was legally married wife of the deceased but there was enough proof to hold that they were living in live-in relationship and was considered as a legal representative. It was ordered that out of the amount of compensation awarded, she would be entitled to ₹5,00,000/-.

Heard learned counsel for the parties, perused the paper book and relevant documents produced by them.

Learned counsel for the insurer contends that the Tribunal erred in awarding 50% future prospects. He further contends that the Tribunal wrongly applied the multiplier by considering the age of deceased instead of age of the parents.

Learned counsel for the claimant while defending the award argues that she was held to be legal representative and was living in a live-in relationship with the deceased. Thus, the amount of ₹5,00,000/- apportioned to her is on the lower side.

Learned counsel for the parents of the deceased defends the award and argues that Priyanka Das was not married to their son and the amount already awarded by the Tribunal to her is on the higher side and no further amount should be awarded.

The contention raised by learned counsel for the insurer lacks merit. It has been duly proved on record that the deceased was working as a Manager, Contact Centre with M/s Ericson India Pvt. Ltd. and was having a permanent job and his salary was proved. Thus, the Tribunal rightly awarded 50% future prospects in consonance with the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157**, as the deceased was below 40 years old and was having a permanent job.

The next contention of learned counsel for the insurer regarding multiplier lacks merit in view of decision of the Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation**

and another (2009) 6 SCC 21. The issue is no longer res-integra that multiplier is to be applied on the basis of age of the deceased.

The Supreme Court in case of **Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18,** held as under:

“On the basis of the finding recorded by the Tribunal and affirmed by the High Court, it is evident that the deceased was 23 years of age on the date of accident i.e. 22.09.2009. He was unmarried and his parents who filed the petition for compensation were in the age group of 40 to 45 years. The High Court, relying on the decision in the case of Ashvinbhai Jayantilal Modi (supra), held that multiplier 14 will be applicable in the present case, keeping in mind the age of the parents of the deceased. The legal position, however, is no more res integra. In the case of Munna Lal Jain (supra) decided by a three Judge Bench of this Court, it is held that multiplier should depend on the age of the deceased and not on the age of the dependants.”

No fault can be found in the award passed by the Tribunal applying the multiplier of 16, as the deceased was 33 years old at the time of accident.

As regard the contention of learned counsel for the claimant that the amount of ₹5,00,000/- apportioned to her is on the lower side deserves acceptance.

The evidence has been produced before the Tribunal to state that they were living together from past 11 years before the accident. Even at the time of accident, the claimant and the deceased were travelling together. There were photographs of the deceased and the claimant with the family. Moreover, she was one of

the nominee in the Provident Fund Account and in Gratuity of the deceased. On the basis of evidence adduced, the Tribunal held her to be legal representative and assumed that there was a live-in relationship.

Apart from this, because she sustained 100% loss of vision in the said accident, in such circumstances, it is deemed appropriate that a sum of ₹7,50,000/- be apportioned to her. She would be entitled to the said amount alongwith interest as awarded by the Tribunal.

The appeal of the insurer is dismissed and the appeal of the claimant is partly allowed in the aforesaid terms.

January 24th, 2019

pankaj baweja

[AVNEESH JHINGAN]

JUDGE

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No