IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3948 of 2017
Decided on:09.04.2019

The Oriental Insurance Company Limited .....Appellant

versus

Rani Devi and others ....Respondents

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

Present: Mr.S.S.Sidhu, Advocate,
for the appellant.

None for the respondents.

DR.RAVI RANJAN, J. (Oral)

This appeal has been preferred by the appellant-Insurance Company against the Judgement and Award dated 05.04.2017 rendered in MACT case No.72 of 2016 by the Motor Accident Claims Tribunal, Kaithal.

1. Despite service of notice, none of the respondents are represented at the time of hearing of the matter. On the earlier occasion also, since none of them have appeared, this Court had taken a decision vide order dated 01.04.2019 that the appeal will proceed *ex parte* against the respondents.

2. The claimants/respondents filed a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.50 Lakhs on account of death of Shish Pal in a motor vehicular accident.

According to the claimants, the deceased Shish Pal was going from village Fatehpur to village Pharal alongwith his son Gurmit on a motorcycle, which was being driven by Shish Pal at moderate speed, observing all the traffic rules. At about 3.30 P.M., a car driven by respondent no.1-Amit Kumar in rash and negligent manner, came at a high speed violating the traffic rules, without blowing horn, from the opposite side i.e. Dhand Road and when they reached near the drain bridge, Fatehpur on Dhand road, it collided with the motorcycle. Both the occupants fell down. Shish Pal fell on *pacca* road and received multiple and grievous injuries on various parts of his body whereas Gurmit fell on *kachha* portion of the road and received minor injuries. After the the accident, the respondent no.1-Amit Kumar (respondent no.6 in the present appeal), i.e., the driver of the offending vehicle, ran away from the spot. Shish Pal succumbed to the injuries on 18.05.2016 in PGI, Rohtak. According to the claimants, the accident was result of rash and negligent driving of the car by the respondent no.1 for which a First Information Report was also registered against him and in connection of which he is facing trial.

3. The Tribunal, on appreciation of rival pleadings and materials available on record, held that the accident was result of rash and negligent driving by the driver of the offending vehicle and awarded a sum of Rs.10,38,728/- to the claimants by way of compensation alongwith interest at the rate of 7.5 % p.a. to be calculated from the date of filing of the claim petition till its realisation. The amount of compensation has been held to be payable by all the respondents jointly and severely. However, it is also noted in the impugned judgment that, since the question with respect to addition of income towards future prospects has been referred to a larger Bench of Hon'ble Supreme Court, out of Rs.10,38,728/- only Rs.9,19,928/- alongwith interest was directed to be released to the claimants.

4. In the aforesaid background of matter I have heard learned counsel for the appellant.

5. At the time of hearing by this Court, learned counsel for the appellant-Insurance Company confined his challenge only to two issues.

It is first contended, that according to the decision of the Constitution Bench of the Hon'ble Apex Court rendered in **"National Insurance Company Limited vs. Pranay Sethi and others," 2017(4) RCR(Civil) 1009**, taking into consideration the age of the deceased assessed by the Tribunal to be 51 years, only 10% of the income could have been allowed under the head of future prospects. It is next contended that amount awarded under the conventional head is also at the much higher end, in as much as, the Apex Court in **Pranay Sethi (supra)** has only allowed maximus of Rs.70,000/- under such head whereas the Tribunal has awarded Rs.1 lakh to the widow under the head of loss of consortium whereas for funeral expenses it has granted Rs.25,000/-.

Learned counsel for the appellant-Insurance Company has submitted that in paragraph no.61(iv), the Hon'ble Supreme Court has clearly laid down that, if the age of the deceased was between 50 to 60 years, 10% of the established income should be added under the head of future prospects whereas the Tribunal has added 15% of the income. On such basis it is contended that there should be reduction in the amount allowed under the aforesaid heads.

It is true that in case the age of the deceased is taken to be 51 years then only 10% is to be allowed under the head of future prospects as per the decision of Apex Court in **Pranay Sethi (supra)** but at the same time, the case of the claimant-the widow of the deceased, is that her husband was of 50 years of age at the time of the accident whereas from the documents on records it appears that he was 51 years of age. This is also a fact that at the time when the decision was made by the Tribunal, the decision of Hon'ble Supreme Court rendered in **Pranay Sethi (supra)** was yet to come and as such 15% of income was added under the aforesaid head by the Tribunal. However, at the same time, since now the aforesaid decision of Hon'ble Apex Court has come, if age is taken to be 51 years then only 10% would be required to be allowed. When learned counsel was confronted with a question as to what would be the difference of amount if in place of 15% only 10% of the established income is added under the aforesaid head? Then learned counsel answered that it would be about Rs.32,000/- only.

It is regretted that for a difference of meagre amount of Rs.32,000/-, when more than Rs.10 Lakhs has been awarded to the claimants, who obviously belongs to the lower *strata* of the society as the husband of claimant no.1 was a mason (*Raj Mistry*) and his income has been assessed at Rs.8,000/- per month only, the Insurance Company has chosen to prefer this appeal and dragged the claimants upto this Court.

6. In the facts and circumstances of this case, in my opinion no interference is required in the judgment impugned for reducing the compensation amount by a meagre amount of Rs.32,000/- only.

7. By way of next submission it has been contended that the Tribunal has erroneously granted Rs.1 Lakh to the widow for loss of consortium and Rs.25,000/- towards funeral expenses. As per the law laid down by the Apex Court in **Pranay Sethi (supra)** funeral expenses could be maximum at Rs.15,000/- and loss of consortium Rs.40,000/- is to be allowed.

8. The Tribunal has granted Rs.1 Lakh as loss of consortium in

view of the decision rendered by the Apex Court in "**Rajesh and others vs. Rajbir Singh and others" 2013(9) SCC 54**. Though this limb of submission raised on behalf of the appellant-Insurance Company appears to be attractive but on deeper scrutiny, in my considered opinion, the same has to be rejected. The Apex Court in "**Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others," 2018 (4) RCR (Civil) 333**, considering, following and explaining the law declared by the Hon'ble Supreme Court in **Pranay Sethi (supra),** has come to the conclusion that Rs.40,000/- each should be given to the claimants who would be entitled for spousal, parental or filial consortium.

9. According to the aforesaid decision, the claimant no.1, i.e. widow Rani Devi would be entitled for Rs.40,000/- as spousal consortium and four sons and daughters would also be entitled for Rs.40,000/- each by way of parental consortium. If the aforesaid amounts are added then it will become Rs.2 Lakhs and if Rs.15,000/- only is given towards the funeral expenses, the sum total under the conventional head would be Rs.2,15,000/- whereas the Tribunal has granted Rs.1,25,000/- only. In such a situation this Court would refrain from interfering into the findings recorded by the Tribunal on this issue also.

As a sequel of the aforesaid discussion this appeal is bound to fail and, is, accordingly, dismissed. However there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

April 09, 2019
dharamvir

Whether speaking/reasoned: Yes
Whether Reportable: No