IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5071 of 2017(O&M)
DECIDED ON: APRIL 05, 2019

THE ORIENTAL INSURANCE COMPANY LTD.

.....APPELLANT

VERSUS

HARINDER KAUR AND OTHERS

.....RESPONDENTS

AND

FAO No. 6199 of 2017 (O&M)

HARINDER KAUR AND OTHERS

.....APPELLANTS

VERSUS

THE ORIENTAL INSURANCE COMPANY LTD.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sanjiv Pabbi, Advocate
for the appellant-Insurance Company in FAO No. 5071/2017 and
for respondent No. 1 in FAO 6199/2017

Mr. Yogesh Gupta, Advocate
for the appellants in FAO No. 6199 of 2017 and
for respondents No.1 and 2 in FAO No. 5071 of 2017

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AVNEESH JHINGAN J. (ORAL)

The aforesaid two appeals are being disposed of by a common order as they are arising out of the same accident and same award.

The award dated 15.03.2017 passed by the Motor Accident Claims Tribunal, Mohali (for brevity 'the Tribunal') has been assailed by filing two appeals. One appeal by the insurer (i.e. The Oriental Insurance Co. Ltd.) of Mahindra Bolero bearing registration No. PB-10-FF-5010 (hereinafter referred to as 'offending vehicle') and another by the legal representatives of Charanjit Singh (deceased) i.e. FAO No. 5071 of 2017 (filed by the insurer) and FAO No. 6199 of 2017 (filed by the parents of the deceased) respectively.

The facts with regard to the accident and liability to pay the compensation are not disputed by the parties. There is no dispute with regard to the age of the deceased and his occupation also.

Learned counsel for the insurer contends that multiplier of '17' has wrongly been applied, as per the age of the deceased the submission is that multiplier should be as per the age of the mother. The grievance raised is that Tribunal erred in awarding 50% future prospects.

Learned counsel for the claimants argues that in spite of acceptance of acknowledgement of income tax returns the Tribunal wrongly assessed the income. His grievance is that the amounts awarded under the conventional heads are on lower side.

The contention raised by learned counsel for the insurer that the multiplier of '17' was wrongly applied by considering the age of the deceased instead of taking the age of mother deserves rejection.

The issue regarding application of multiplier on the age of the deceased and not on the age of dependants, is no longer *res-integra,* in view of the decision of the Supreme Court in the case of ***Sube Singh and another vs. Shyam Singh (Dead) and others; 2018 (3) SCC 18*** wherein, it has been 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."*
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> *(emphasis supplied)*

Further, the Supreme Court in ***Magma General Insurance Company Ltd. Versus Nanu Ram alias Chuhru Ram and others, 2018(9) JT 195*** has held as under:

> *"4.The Respondents Nos. 1 and 2- i.e. the father and sister of the deceased filed an Appeal against the order of the MACT before Punjab and Haryana High Court praying for enhancement of compensation. The High Court held that the facts relating to the accident were admitted and proved before the MACT. It was established that the deceased had died as a result of the rash and negligent driving of respondent No.3. The High Court found that the MACT had used the wrong principle for application of the multiplier. The multiplier ought to have been taken on the basis of the age of the deceased, and not of his father."*

As far as the awarding of future prospects is concerned, the income assessed by the Tribunal is itself in dispute. The acknowledgements of income tax returns filed for the assessment years 2014-2015 to 2016-2017 were exhibitted before the Tribunal as PW-1/F to PW-1/H. The same were not relied upon by the Tribunal as the detail of earning i.e. source of income was not forthcoming.

An application for adducing additional evidence has also been moved alongwith the appeal filed by the claimants. Complete copies of returns for the assessment years 2014-2015 to 2016-2017 have also been annexed with the said application.

Learned counsel for the insurer opposed the said application on the ground that the claimants need to prove the income tax return now being produced and the insurer be provided an opportunity to verify or rebut the same.

In order to determine the earnings of the deceased, the income tax returns filed would be the basic document and copies of complete income tax returns annexed with the CM need to be considered proved. At this stage, it would not be appropriate to accept the said returns without providing an opportunity to the insurer to verify or rebut the same.

Without expressing any opinion on the merits of the case, the issue with regard to quantum of compensation only is remitted back to the Tribunal to decide afresh after providing opportunity to the parties concerned. The Tribunal after determining the earning of the deceased and source of income, thereafter would decide the issue of future prospects keeping in view the decisions of the Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others AIR 2017 SC 5157*** and ***Hem Raj vs. Oriental Insurance Company Ltd. 2018 (2) PLR 480.***

Since, the only issue with regard to the quantam is to be decided and claimants and insurer shall appear before the Tribunal on 15.05.2019. Copies of the returns annexed with CM be also sent to the Tribunal.

Here, it would be pertinent to mention that vide order dated

27.07.2017, disbursement of 50% of the compensation amount was stayed by this Court in the appeal filed by the insurer. The same shall be kept in FDR till the remanded matter is decided.

Both the appeal are disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

APRIL 05, 2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No