IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5517-2018(O&M)
Date of decision:-15.3.2019

The Oriental Insurance Company Ltd.

...Appellant

Versus

Kulwinder Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ram Avtar, Advocate
for the appellant.

Mr.Ashwani Arora, Advocate
for respondents No.1 to 3.

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H.S. MADAAN, J.

Mr.Kulwinder Singh, aged about 32 years, Jaswinder Singh, aged about 30 years - sons and Ms.Ranjit Kaur, aged about 28 years, married daughter of Smt.Shakuntla Devi, who lost her life in a motor vehicular accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Raj Kumar – driver, Luxmi Narayan – owner and Oriental Insurance Co. Ltd.- insurer of truck having registration No.HP12-H-1290 (hereinafter referred to as the offending truck) claiming compensation to the tune of Rs.30 lacs.

As per the case of the petitioners/claimants, on 19.10.2016 Sh.Chand Singh along with his wife Smt.Shakuntla was returning home from village Issarnagar, District Panchkula on a motorcycle, which was being driven by him (Sh.Chand Singh) on which Smt.Shakuntla was pillion riding; that the motorcycle was being driven at a slow speed on the left side of the road; that one Jaswinder Singh was following them on a separate motorcycle; that at about 4:15 p.m. when they had crossed Chandimandir Light Points, then the offending vehicle being driven by respondent No.1 – Raj Kumar at a fast speed in a rash and negligent manner struck against their motorcycle, as a result both the riders, namely, Sh.Chand Singh and Smt.Shakuntla fell down on the road; that Smt.Shakuntla Devi was run over by tyre of the offending truck; that Sh.Chand Singh and Smt.Shakuntla Devi had suffered multiple serious injuries; that Smt.Shakuntla Devi had succumbed to the injuries at the spot, however, both of them were taken to General Hospital, Sector 6, Panchkula; that Sh.Chand Singh was referred to PGI, Chandigarh from where he was referred to GMSH, Sector 16, Chandigarh on 28.10.2016, however keeping in view his serious condition, he was referred back to PGI, Chandigarh on the same day; that he was discharged from PGI, Chandigarh on 31.10.2016 and was taken home but due to his serious condition, he was again taken to PGI, Chandigarh on 2.11.2016, where the doctors on duty declared him brought dead; that as a matter of fact, the deceased Sh.Chand Singh had died as a result of suffering injuries in the accident; that the post-mortem examination was conducted on the deadbodies of deceased Sh.Chand Singh and Smt.Shakuntla Devi; that formal FIR regarding the accident was recorded at Police Station Chandimandir, District Panchkula vide FIR No.267 dated 19.10.2016 for the offences under Sections 279, 304-A and 337 IPC. The petitioners/claimants contended that deceased Smt.Shakuntla Devi was a housewife and Rs.15,000/- be assessed for the domestic services provided by her to her family members.

Notice of the claim petition was given to the respondents, who put in appearance. Respondents No.1 and 2 had filed a joint written statements whereas respondent No.3 came up with a separate written statement. In the joint written statement filed on behalf of respondents No.1 and 2, they took several preliminary objections contending that the claim petition was not maintainable and the claimants had not approached the Court with clean hands. On merits, they denied the material assertions in the claim petition stating that a wrong FIR had been got registered against respondent No.1 involving the truck in question; further contending that respondent No.1 was having a valid driving licence and the vehicle in question was insured with respondent No.3.

In the written reply filed by respondent No.3, it took up the plea that the claimants had filed the claim petition in collusion with respondents No.1 and 2 to extract illegal compensation from answering respondent and liability of insurance company would arise only if driver of the offending vehicle was holding a valid and effective driving license at the time of accident and the vehicle was being driven as per the provisions of the Motor Vehicles Act.

All the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Smt.Shakuntla Devi has died in a road side accident due to

rash and negligent driving of Truck bearing registration No.HP12-H-1290 by respondent No.1? OPP.

2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP.
3. Whether respondent No.1 was not having a valid and effective driving license at the time of accident? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of their case, the claimant No.2 Jaswinder Singh got his statement recorded as PW1 besides tendering some documents in evidence.

On the other hand, respondents have tendered in evidence copy of driving license of respondent No.1 as Ex.R1, copy of registration certificate as Ex.R2, copy of national permit as Ex.R3, copy of insurance policy as Ex.R4.

After hearing arguments, the Tribunal decided issue No.1 in favour of claimants and against the respondents, issue No.2 in favour of the claimants and against the respondents, issue No.3 in favour of respondent No.1 and against respondent No.3. Resultantly while allowing the petition vide award dated 14.3.2018, the Tribunal granted compensation of Rs.12,03,000/- along with interest @ 7.5% per annum from the date of filing of the petition till realization payable by all the three respondents jointly and severally. The manner in which the compensation is to be apportioned was also given in the award.

Such award left the Insurance Company aggrieved and it has knocked at the door of this Court praying that the appeal be accepted, the award under challenge be set aside.

Notice of the appeal was issued to the respondents. Respondents No.1 to 3 put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the Tribunal definitely fell in error in quantifying the services rendered by the deceased to the family in monetary terms to be Rs.9,000/- per month.

Interestingly, the husband of the deceased, who too perished in the accident and who was running a tyre repair shop, his monthly income was taken to be Rs.7,175/-. For a person, who was working, the monthly income was taken to be on lower side than a female of old age, who was a household lady. There was little justification for taking such income of the deceased to be Rs.9,000/- per month. No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In ***Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673***, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand and Ors., 2015(4) PLR 405***, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month.

Keeping in view the facts and circumstances of the case, the age of the deceased, the economic background of the parties, I find that it would be proper and appropriate if the notional income of the deceased Smt.Shakuntla Devi is taken to be Rs.6,000/- per month.

However, the Tribunal was justified in refusing to make deduction of any amount towards personal expenses.

In that way, the annual contribution comes out to Rs.72,000/- (6,000 x 12). Keeping in view the age of the deceased, the multiplier of 11 was properly used. The compensation comes out to Rs.7,92,000/(72,000 x 11).

The claimants are entitled to get Rs.15,000/- under the head funeral expenditure and Rs.15,000/- towards loss of estate.

Thus the total compensation comes out to be Rs.8,22,000/- (7,92,000 + 30,000).

The Tribunal has wrongly awarded compensation of Rs.12,03,000/-. The same is reduced to Rs.8,22,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization on the amount of Rs.8,22,000/- The other terms and conditions given in the relief clause of the original award shall remain the same.

With such modification, the appeal is allowed partly.

15.3.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No