**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 6580 of 2019(O&M)

Date of decision: 31.10.2019

Oriental Insurance Co. Ltd. …..Appellant

VERSUS

Munesh @ Munni Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Lalit Garg, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 03.07.2019 passed by the Motor Accidents Claims Tribunal, Rewari (in short 'the Tribunal') whereby compensation has been assessed on account of death of Sunil Kumar in a motor vehicular accident that took place on 10.09.2016.

Counsel for the appellant/insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 pertaining to the accident being result of rash and negligent driving of offending vehicle i.e. HR14-D-1534 and compensation assessed. It is argued that Pardeep, brother of deceased Sunil was examined to discharge onus of issue No.1. Pardeep lodged FIR No.447 dated 10.09.2016 under Sections 279, 304-A IPC at Police Station Sadar, Bahadurgarh against unknown vehicle and driver. It is vehemently argued that had Pardeep been present at the spot, there was no reason for him not to disclose particulars of the offending vehicle at the first available opportunity when he lodged the FIR on the date of occurrence. It is further argued that Pardeep in his cross examination had stated that they departed from Mundaka at about 2:30 PM and reached at Daboda, the accidental place at about 2/2.30 PM. He further stated that distance between Mundaka and Daboda is about 25-30 KMs and it takes about one hour to cover the distance. He has further deposed that the vehicle driven by Sunil was ahead of them not less than 500 mtrs and it took about 3/4 minutes to reach at accidental spot. Counsel would argue that in view of the aforesaid facts elicited in cross examination of Pardeep, his testimony is not sufficient to prove that accident is the result of rash and negligent driving of alleged offending vehicle.

To assail quantum of compensation, it is argued that Tribunal has wrongly assessed income of the deceased at Rs.10,000/- per month by relying upon testimony of Rinku PW-4. It is further argued that Rinku had deposed that deceased was paid Rs.15,000/- as driver on his car. The income tax return of Rinku for the financial year 2016-17 is brought on record but there is no reference to payment of salary to the deceased. In addition, it is argued that annual income of Rinku is shown as Rs.2,96,963/-, therefore, it is highly improbable that Rinku paid Rs.15,000/- per month to Sunil (since deceased).

I have heard counsel for the appellant, perused the paper-book particularly the award.

Perusal of cross examination of Pardeep makes it evident that he was not confronted with contents of the FIR lodged at his behest. Pardeep, in his cross examination, had categorically stated that he had disclosed particulars of the offending vehicle when he met the police for the first time. Since Pardeep was not confronted with contents of the FIR, he was deprived of an opportunity to explain as to why FIR does not make reference to registration particulars of the offending vehicle. This apart, counsel for the appellant has failed to point out any materials on record suggestive of the fact that offending vehicle has been indicted in the proceedings later as a result of collusion between the claimants and owner of the said vehicle. In the given circumstances, the appellant cannot derive any advantage to his contention from the factum of non-mentioning of particulars of offending vehicle in the FIR. There appears some error while recording the time of departure of Pardeep from Mundaka and for that reason there is discrepancy in the case pointed out by counsel for the appellant.

The driver of the offending vehicle did not appear in the witness box to counter testimony of Pardeep and challenge correctness of version given in the claim application. On due investigation of FIR, challan has been presented in the Court and driver of the offending vehicle has been put to trial. There is nothing on record suggestive of the fact that Pardeep had hostility against driver of the offending vehicle in order to falsely implicate him in criminal proceedings. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. In view of the above, I do not find any reason to interfere in findings of the Tribunal on issue No.1.

This brings the Court to quantum of compensation. The Tribunal has assessed income of the deceased at Rs.10,000/- per month by accepting that deceased was working as driver on car owned by Rinku. Rinku has not produced any documentary evidence in respect of employment and payment of salary to the deceased. The income tax return filed by Rinku shows his annual income at Rs.2,96,963/- i.e. less than Rs.25,000/- per month. It is difficult to accept that a person who had income of approximately Rs.25,000/- per month would be in a position to pay Rs.15,000/- as salary to his driver. However, driving licence of Sunil has been produced on record. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased assessed by the Tribunal cannot be faulted with.

The Tribunal has deducted 1/4th for personal and living expenses of the deceased. The claim has been filed by the widow, minor son and parents of the deceased. Hari Singh, father of the deceased appeared in the witness box and stated that he is a pensioner and was not dependent on deceased Sunil. In the given circumstances, Hari Singh shall not be entitle to loss of dependency. That being so, admissible deduction for personal expenses would be 1/3rd. Other criteria adopted by the Tribunal for computing loss of dependency is correct and affirmed. Accordingly, loss of dependency is calculated at Rs.16,80,000/- [Rs.18,00,000/- (Rs.10000 x 12 x 15) + Rs.7,20,000/- (40% addition towards future prospects) – Rs.8,40,000/- (1/3rd deduction towards personal expenses)].

Compensation allowed under conventional heads is in consonance with judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

In view of the above, total compensation comes to Rs.17,50,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,10,000/- (Rs.19,60,000/- - Rs.17,50,000/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

The Tribunal has awarded interest at the rate of 9% per annum from the date of filing claim petition till realization. The appellant has not placed on record any document with regard to bank rate of interest at the time of accident or passing of award. Contention of the insurance company to challenge correctness of rate of interest is rejected. For this purpose, reference can be made to judgment of Hon'ble the Supreme Court **Sandhya Rani Debbarma and others Vs. National Insurance Co. Ltd. and another, 2016(4) RCR (Civil) 465.**

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of appeal filed by the insurance company would not cause prejudice to their right.

OCTOBER 31, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no