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

**F.A.O. No. 2148 of 2014**
**DATE OF DECISION :- November 13, 2019**

**TATA AIG General Insurance Company Limited ...Appellant**

**Versus**

**Kiran Bala and others ...Respondents**

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

**Present**:- Mr. Rajesh K. Sharma, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for cross-objector/respondent No. 1.

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Briefly stated the facts of the case are that Anil Kumar son of Late Sh. Nirmal Singh had died in a motor vehicular accident, which took place on 11.5.2012 at about 2.00 P.M. in the area of Police Station Kharar, statedly on account of rash and negligent driving of motor cycle No. CH-01-AJ-3299 (hereinafter referred to as the offending motor cycle) by respondent No. 1 Ajit Kumar. The mother of deceased namely Smt. Kiran Bala, aged about 47 years had brought a claim petition under Section 166 of the Motor Vehicular Act against respondeats i.e. Ajit Kumar-driver, Ram Naresh-owner and TATA AIG General Insurance Company Limited, Chandigarh-insurer of motor cycle No. CH-01-AJ-3299, claiming compensation to the tune of Rs.30 lacs.

According to the version of the claimant, the deceased was aged about 26 years and was working as a property dealer earning Rs.8,000/- per month and she was dependent upon his earnings.

Notice of the claim petition was given to the respondents. Respondent No. 1 did not appear despite service and was proceeded against ex-parte whereas respondents No. 2 and 3 had appeared and filed separate written statements contesting the claim petition. Issues on merits were framed and the case was posted for evidence of claimant. The claimant lead her evidence. However, learned counsel appearing for respondent No. 2 made a statement before the Tribunal on 22.11.2013 pleading no instructions to appear on behalf of respondent No. 2. No other person had put in appearance on his behalf, as such respondent No. 2 was proceeded against ex-parte. Learned counsel appearing for respondent No. 3 had tendered into evidence certain documents and closed its evidence.

After hearing arguments, the Tribunal vide Award dated 5.2.2014 accepted the claim petition and awarded compensation of Rs.9,68,000/- to the claimant payable by all the three respondents jointly and severally with interest at the rate of 7.5% per annum from the date of filing of the claim petition till actual realization. Respondent No. 3 Insurance Company was directed to satisfy the claim of claimant with a right to recover the same from respondents No. 1 and 2.

Respondent No. 3-Insurance Company felt aggrieved by the said Award and has approached this Court by way of filing an appeal, notice of which was given to the respondents. Respondent-claimant has appeared through counsel and has filed cross objections praying for enhancement of compensation which are bring resisted by appellant-Insurance Company.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on appreciation of evidence adduced before it has come to the conclusion that respondent No. 1 Ajit Kumar was author of the accident by his rash and negligent driving of motor cycle due to which Anil Kumar had suffered injuries to which he had succumbed. Such finding was given relying upon eye witness account provided by PW2 Bhupinder Kumar, copy of F.I.R. No. 81 dated 11.5.2012 (Ex.R1). Certified copy of charge sheet framed against respondent No.1 Ajit Singh as Ex.P7 and the fact that such evidence had gone unrebutted inasmuch as neither respondent no. 1 nor respondent no. 2 had got his/their statements recorded before the Tribunal to rebut the evidence adduced by the claimant. Such finding is proper and appropriate and does not call for any interference. In view of such finding the driver and owner and Insurance Company of the motor cycle in question are certainly liable to pay compensation.

Returning to the quantum of compensation the Tribunal took the age of the deceased to be 26 years. However, avocation of deceased as property dealer and his earning Rs.8,000/- per month was not accepted since only claimant had stated so. However, income of deceased was taken to be that of a labourer to be Rs.6,000/- per month and above all 50% was added towards future prospects. Though learned counsel for the Insurance Company has contended that minimum rates of wages in State of Punjab w.e.f. 1.3.2012 were 4268/- for an unskilled labourer however it has not been explained as to how the deceased can be categorized as an unskilled labourer. Rates of wages for an skilled worker are definitely on higher side and there are various types of skilled workers. Though minimum rates of wages are indicative of the wages for various categories of workers at a relevant time but that cannot be accepted as the final word on the issue. The Tribunal considering the facts and circumstances of the case taking minimum wages of the deceased to be 6,000/- per month cannot be faulted for any reason. The Tribunal was justified in not accepting Rs.8,000/- as monthly income of the deceased for the reason that claimant could not produce on record any documentary evidence in support thereof. Further more admittedly the deceased was not an Income Tax payee. Though addition of 50% towards future prospects is certainly on higher side. In view of judgment '***National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'***, when the deceased was below the age of 40 years, an addition of 40% is to be made. Doing that the monthly income of the deceased comes out to Rs.8400/-.

Since deceased was a bachelor, 50% of the amount is to be deducted towards his personal and living expenses. Doing that dependency of the claimant comes out to Rs.4200/- per month. The annual dependency of the claimant comes out to Rs.50,400/- (4200 x 12). Keeping in view the age of the deceased multiplier of 17 was properly used by the Tribunal. Therefore, the total dependency comes out to Rs.8,56,800/- (50,400 x 17). The claimant is entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- towards loss of estate. Therefore, the total compensation is worked out to Rs.8,86,800/-. The Tribunal has awarded compensation of Rs.9,68,000/- which is on higher side. The same is reduced to Rs.8,86,800/- by way of acceptance of the appeal partly. The direction by the Tribunal that

Insurance Company at the first instance would make the payment of this amount with interest and cost to the claimant though would have a right to recover the said amount from respondents No. 1 and 2 shall remain intact. Rate of interest awarded at the rate of 7.5% shall also remain as earlier. The excess amount, if any, paid to the claimant be refunded by her immediately otherwise the Insurance Company shall have a right to recover the amount from the claimant by moving an execution application before the Tribunal.

Consequently the cross objections seeking enhancement of compensation amount are found to lack merit and are dismissed accordingly.

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

**November 13, 2019**
*p.singh*

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No