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

FAO-2907-2020 (O&M)

Date of Decision: 09.10.2020

IFFCO-TOKIO General Insurance Company Ltd.

.....Appellant

versus

Uttam Sita Ram Kadam and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Dr.Malvika Singh, Advocate for the appellant.

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Appellant-insurance company has filed the instant appeal assailing the award dated 17.01.2020 passed by the Motor Accident Claims Tribunal, Kurukshetra in favour of respondent No.1 confined as regards quantum of compensation.

Brief facts that would require notice are that two claim petitions under Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred to as the 'Act') came to be filed as an offshoot from an accident which took place on 27.11.2015. One of the claim petitions was filed by respondent No.1 herein who had suffered injuries in the accident involving truck bearing registration No. HR73-0090 which was insured with the

appellant-company. Injured/claimant (respondent No.1) claimed an amount of Rs. 25 lakhs towards compensation. Vide order dated 21.02.2017 the following issues were framed by the Tribunal:-

1. *Whether the accident resulting into injuries to claimants Dilshad, Uttam Sita Ram Kadam and death of Rudra Pratap Singh took place due to rash and negligent driving of respondent No.1, while driving truck bearing No.HR73-0090 or composite negligence of respondents No. 1 and 4?OPP*
2. *If issue No.1 is proved to what amount of compensation and from whom the claimants are entitled to?OPP*
3. *Whether there was violation of the terms and conditions of the insurance policies and respondents No.3 and 6 are not liable to pay any compensation?OPR*
4. *Relief.*

Since the scope of the instant appeal has been confined only with regard to quantum of compensation it would not be necessary to advert to the findings recorded by the Tribunal on issues No.1 and 3.

As regards issue No.2 the Tribunal recorded a finding that the claimant on account of the injuries suffered in the accident had incurred a permanent disability to the extent of 61% and as such was entitled to compensation under the heads of disability and loss of earning; medical and other expenses; special diet; transportation; need for attendant as also pain and suffering. The Tribunal further addressed the aspect as to how the disability of the claimant on account of the crush injury on his left hand and left foot would translate into loss of earning capacity. The Tribunal assessed the functional disability of the claimant as 100%. Based on evidence adduced on record income of the claimant/respondent No.1 was assessed at

Rs. 20,046/- per month. Taking date of birth of the claimant as 01.01.1965 multiplier of '13' was applied. The compensation amount was computed by the Tribunal in the following terms:-

“ So, in view of all the above, the income of the above-named claimant at the time of sustaining injuries can be worked out to be Rs.20,046/-p.m. As such, the per annum income would be Rs.2,40,552 and by multiplying the same with '13', it is Rs.31,27,176/-. By adding 10% to his said income, his total income works out as Rs.34,39,893/-. As his functional disability has been taken as 100%, as such, the amount of compensation payable now comes to Rs.34,39,893/-. It is an admitted fact that though the accident took place on 27.11.2015, but the claimant was paid salary upto 31.10.2017, till vide notice dated 28.09.2017 Ex.P9 his services were terminated by the company. So, the amount of Rs.4,81,104/-, i.e. salary for 24 months @ Rs.20,046/-, is required to be deducted from the aforesaid amount of compensation calculated. After the said deduction, the amount payable as compensation under this head comes to Rs. 29,58,789/- (Rs.34,39,893/- minus Rs.4,81,104/-).

The above-named claimant has also placed on record documents i.e. medical bills/receipts Ex.P113 to Ex.P198-A amounting to total Rs.1,12,482/-. Though the said medical bills/receipts have not been strictly proved in accordance with law by examining the concerned doctor/chemist, but it is well settled that in such claim petition strict proof of medicines bills/receipts is not necessary. As

such, keeping in view all the above, claimant is entitled to the expenditure incurred on his treatment and purchase of medicines vide aforesaid bills amounting to Rs. 1,12,482/-.

Considering the injuries suffered by claimant/injured, requirement of claimant for special diet is borne out, for which lump-sum amount of Rs.10,000/- is awarded.

Claimant/injured has not brought on record any receipt etc. of money paid for transportation etc. However, estimating his number of visits to the hospitals, a lump-sum amount of Rs.10,000/- is awarded to claimant towards compensation for expenditure on transportation.

Considering the fact that the above-named claimant needs the support of an attendant, as stated by PW8 namely Amit Senior Assistant SOMA Enterprises Ltd. in his examination-in-chief (qua which no cross-examination was conducted), a lump-sum amount of Rs. 50,000/- is awarded.

As far as the claim for compensation under the head of pain and suffering is concerned, as per his disability certificate Ex.P4, he suffered said permanent disability. Taking the same into consideration, I feel that Rs. 1,00,000/- is reasonable amount of compensation under the head of pain and suffering.

In total, he is entitled to Rs.32,41,271/- as compensation from the respondents as follows:-

i) <i>Loss of earning on account of said permanent disability</i>	= Rs.29,58,789/-
ii) <i>Medical and other expenses;</i>	= Rs. 1,12,482/-
iii) <i>Special diet;</i>	= Rs.10,000/-
iv) <i>Transportation;</i>	= Rs.10,000/-
v) <i>Attendant charges;</i>	= Rs.50,000/-
vi) <i>Pain and suffering</i>	= Rs.1,00,000/-

<i>Total</i>	= Rs. 32,41,271/-

Learned counsel representing the appellant-insurance company has raised a solitary submission with regard to quantum of compensation and contends that the Tribunal has wrongfully applied the multiplier of '13' whereas it ought to have been '11'. In this regard it is urged that the Tribunal had recorded the age of the claimant to be 50 years 10 months and 26 days and accordingly the multiplier that had to be taken was the one which is nearer to the date of birth on the date of accident. It has been argued that the age of the respondent was not 50 years, rather it was 50 years 10 months and 26 days on the date of the accident and hence the claimant did not fall in the age bracket of 46-50 years and as such the multiplier of '13' was not applicable. In support of such contention reliance has been placed upon a judgement of the Delhi High Court in **Bajaj Allianz General Insurance Co. Ltd. vs. Meenakshi and others** in MAC App. 1061 of 2011 decided on **May 30, 2012**.

Having heard counsel at length and having perused the pleadings on record this Court is of the considered view that there is no

infirmity in the impugned award with regard to quantum of compensation.

It has been consistently held by the Apex Court in a series of judgments that the Act is a beneficial piece of legislation enacted to give solace to the victims of the motor accidents who suffer bodily injury or die untimely. In **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR(Civil) 77** the question with regard to selection of multiplier had been elaborated upon. In the case of the claimant falling in the age group of 46-50 years multiplier of '13' was to be applied. Multiplier of '11' was made applicable to the age group of 51-55 years.

Concededly in the facts of the present case the age of the claimant/respondent No.1 was 50 years 10 months and 26 days on the date of the accident. In other words he had not completed 51 years of age for the multiplier of '11' to be applied as is sought to be canvassed by counsel representing the appellant-insurance company. With due respect and humility this Court is unable to follow the view taken by the Delhi High Court in **Bajaj Allianz General Insurance Co.Ltd.'s case (supra)** and would follow the guidelines/parameters laid down by the Hon'ble Supreme Court in **Smt.Sarla Verma's case (supra)** as regards selection of multiplier. In taking such view this Court would find support from a subsequent judgment of the Apex Court in **Shashikala and others vs. Gangalakshamma and another, (2015) 9 SCC 150**. In such matter the date of birth of the deceased as per driving licence was 16.06.1961. On the date of accident i.e. 14.12.2006 age of the deceased was 45 years 5 months and 28 days. Tribunal had taken the age as 46 years. However, the Apex Court took a view that the High Court had rightly taken the age of the

deceased as 45 years and adopted multiplier of '14' which is the appropriate multiplier since the deceased had completed only 45 years of age. The relevant observations are contained in para 16 of the judgment and are reproduced hereunder:-

“ Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16-6-1961. On the date of accident i.e.14.12.2006, the deceased was aged 45 years 5 months and 28 days and the Tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier of 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs. 16,82,310(Rs.1,20,165 x 14).”

In view of the above this Court upholds the view taken by the Tribunal in adopting the multiplier of '13' while computing compensation in favour of respondent No.1 on the basis that he was 50 years of age and had not completed 51 years as on the date of accident and the same being as per dictum laid down in **Smt.Sarla Verma's case (supra)**.

No intervention is called for.

Appeal dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.10.2020
sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No