IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.611-2020(O&M)
Date of decision:07.01.2020

Shri Ram General Insurance Company

.......Appellant

Versus

Smt. Sunita Devi and others

......Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajbir Singh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Insurance company has filed the present appeal against the award passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as "the Tribunal") awarding compensation to the extent of Rs.95,07,657/- on account of death of Karambir, aged 33 years approximately.

Learned Tribunal has found that the offending vehicle i.e. Truck driven by respondent no.5-Mukesh Kumar Gurjar was being driven rashly and negligently. The aforesaid finding has been returned on the basis of deposition of Satish Sharma, the eye witness of the accident, who was running eating joint on the highway.

Learned Tribunal has assessed the income by taking into consideration the average income depicted in the income tax returns Ex.P3, Ex.P4 and Ex.P5, which were submitted to the Income Tax Authority before the death of the deceased in the motor vehicular accident.

Learned counsel appearing for the Insurance Company has submitted that since it was a case of head in collision between the truck and the motor car driven by the deceased, therefore, the learned Tribunal erred in not recording a finding that the deceased was also contributory negligent. He, hence, submitted that the award passed by the learned Tribunal is erroneous.

On a pointed Court question, learned counsel appearing for the Insurance Company admitted that neither in the written statement nor any separate issue or any evidence in this regard has been led by the Insurance Company. He also admitted that before the trial Court, the counsel representing the Insurance Company did not contend before the Tribunal that the deceased was also contributory negligent in causing the accident.

Any how, this Court has examined the evidence of Satish Sharma produced by learned counsel for the Insurance Company.

From the reading of the deposition, this court does not find itself in a position to record a finding that the deceased was also contributory negligent.

It will be too far fetched to hold, as attempted by learned counsel for the appellant, that in each and every case, where the accident is on account of head on collision, the drivers of all the vehicles be held contributory negligent.

Learned counsel for the Insurance Company has further submitted that the deceased was involved in multifarious activities including running a shop of building material and managing fleet of trucks which are now being run by his legal representatives and therefore, the loss of income has been wrongly assessed.

This court has considered the submission.

Business of trading as also managing business of transportation depends upon the managing skills of an individual. In the present case, deceased Karambir was running the business individually. After his death, his dependents have no doubt started managing the business. However, on this ground compensation for the loss of income which the deceased was earning at the time of his death, cannot be denied.

In view thereof, there is no ground to interfere.

Dismissed.

Office is directed to remit the amount of Rs.25,000/- to the Executing Court.

January 07, 2020 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No