

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-645-2021(O&M)

Date of decision: 29.07.2021

Bharat Axa General Insurance Company Limited

.....Appellant

Versus

Baby and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sachin Ohri, Advocate, for the appellant

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The correctness of the award passed by the Motor Accident Claims Tribunal, (hereinafter referred to as the 'Tribunal') while allowing a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988, filed on account of death of Sh. Sandeep aged about 32 years, in a motor vehicular accident on 29.01.2018 has been assailed by the insurer. The learned Tribunal has held that the claimants no. 1 to 4 (widow and three minor children) are entitled to compensation of Rs.62,48,552/- alongwith interest at the rate of 6% per annum. The insurer has been directed to satisfy the award first of all and then recover the amount from the owner/driver of the offending vehicle.

The learned counsel representing the appellant does not dispute the correctness of the finding of fact arrived at by the Tribunal with respect to rash and negligent driving by respondent no.6-Chetan Kumar. It is the case of the claimants that late Sh. Sandeep was crossing

the road on foot when respondent no.5 while driving the motor cycle at a very high speed and in a rash and negligent manner knocked him down. Sh. Sandeep sustained grievous injuries and was shifted by Pardeep and Bajrang Lal to Metro Manas Multi Speciality Hospital, Jaipur. Late Sh. Sandeep succumbed to his injuries on 29.01.2018.

The learned counsel representing the appellant contends that the Tribunal has erred in assessing the income and the dependency on the basis of the income tax return of the deceased for the assessment year 2015-16 (Ex. P-4). He contends that the Tribunal should have taken average of the income as declared in various income tax returns produced for the assessment years 2012-13, 2014-15 and 2015-16. He further contends that the Insurance Company could not be directed to pay the amount as per the award at the first instance.

Heard the learned counsel for the appellant and with his able assistance perused the paper book. It is not disputed by the learned counsel representing the appellant that the deceased was an income tax payee. His income was increasing with each passing year. The accident took place on 27.12.2017. The Tribunal has relied upon the income tax return for the year 2015-16, which was admittedly filed before the death of the deceased. It has also come on record that the deceased was in the business of construction material. He also owned a truck-dumper. The claimants have examined Sh. Parvesh Khan, Senior Tax Assistant in order to prove the income tax returns. Smt. Baby, the widow of the deceased has appeared as PW2.

Keeping in view the aforesaid facts, the Tribunal has not

erred in relying upon the income tax return for the assessment year 2015-16. The learned counsel representing the appellant failed to put forth any convincing argument in support of his submission that the Tribunal ought to have taken the average of the income shown in the income tax returns. If the income of the deceased was increasing consistently, then the Tribunal has to assess the income of the deceased at the time of death and work out dependency.

With regard to the next argument of the learned counsel representing the appellant, it may be noted that the offending vehicle was insured with the appellant-Insurance Company. No doubt, it has been found that Sh. Chetan Kumar did not had a valid driving licence, however, the Tribunal has already given recovery rights to the insurer.

Keeping in view the aforesaid facts, the appellant has failed to make out a case for interference.

Hence, dismissed.

All the pending miscellaneous applications, if any, also stand disposed of.

29.07.2021

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Whether speaking/reasoned

Whether Reportable

Yes / No

Yes / No

(ANIL KSHETARPAL)**JUDGE**