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

**FAO-535-2022 (O&M)**
**Date of decision: 18.02.2022**

THE ORIENTAL INSURANCE COMPANY LIMITED ...Appellant

V/S

JASWINDER KAUR AND OTHERS …Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Mr. Raj Kumar Bashamboo, Advocate,
for the appellant.

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**<u>ARUN MONGA, J. (ORAL)</u>**

**<u>CM-1510-1511-CII-2022</u>**

Applications are allowed, as prayed for, subject to all just exceptions.

Documents are taken on record.

**<u>Main case</u>**

Aggrieved with the award dated 11.10.2021 rendered by Motor Accidents Claims Tribunal, SAS Nagar, Mohali, Insurance Company has preferred the instant appeal.

2. Briefly stated, the facts of the case are that Balwinder Singh son of Surjit Singh died in a motor vehicular accident. His widow, daughter and minor son have approached the tribunal by filing petition under Section 166 of Motor Vehicles Act seeking compensation. They averred that on 29.11.2019 at about 9.25 p.m., deceased Balwinder Singh after closing his shop was coming to his house on his motorcycle and was standing near divider to elevate on the main road. At that time, a truck tralla bearing registration No.PB-65-AY-9845 being driven by Gurjinder Singh in a rash and negligent manner came from Kurali side. He rammed his truck tralla into the back of the motorcycle of the deceased. Due to this accident,

Balwinder Singh fell down on the road, was crushed by the aforesaid truck tralla and suffered multiple serious injuries. He was immediately removed to Civil Hospital, Rupnagar where he was declared dead. Accordingly, FIR No.214 under Sections 279, 304-A of IPC was registered at Police Station, City Rupnagar. Respondent No.2 is the owner of the offending vehicle. The claim petition claiming compensation of Rs.90 lakh along with interest @ 12% per annum was filed by the claimants, who are widow and the two children of deceased.

3. Upon notice, respondents No.1 and 2 appeared and filed joint written statement taking preliminary objections regarding maintainability, locus standi, cause of action, non-joinder of necessary parties etc. On merits, it was averred that no accident ever took place, as alleged by the claimants.

4. Respondent No.3-Insurance Company filed separate written statement taking preliminary objections regarding maintainability; locus standi; cause of action; estoppel; jurisdiction; mis-joinder and non-joinder of necessary parties etc.

5. From the pleadings of parties, following issues were framed by the learned Motor Accidents Claims Tribunal :-

> *1.Whether Balwinder Singh died in a Motor Vehicle Accident dated 29.11.2019 due to rash and negligent driving of offending vehicle bearing registration No.PB-65-AY-9845 by respondent No.1? OPP*
> *2. Whether the claimants are entitled to compensation on account of the death of Balwinder Singh in the accident in question, if so to what amount and from whom? OPP*
> *3. Whether the respondent No.1 was not holding any valid and effective driving license at the time of accident in question? OPR*
> *4. Whether the respondent No.2 being owner of the offending vehicle has violated the terms and conditions of the insurance policy? OPR*
> *5. Whether the claim petition is not maintainable? OPR*
> *6. Whether the claimant has not come to the Court with clean hands? OPR*

*7. Whether the claim petition is liable to be dismissed due to mis-joinder and non-joinder of the parties? OPR*
*8. Relief.*

6. On the basis of pleadings and evidence adduced by both the parties, Issues No.1 and 2 were decided in favour of the claimants whereas Issues No.3 and 4 were decided against respondent No.3 and Issues No.5 to 7 were decided against the respondents by the learned Tribunal and vide award dated 11.10.2021 total compensation of Rs.36,50,000/- was awarded to the claimants as per following break up:-

| | | |
|---|---|---|
| Age | 45 years | |
| Occupation | Mechanic/ Shop Keeper | |
| Claimants | Widow and children | |
| Sr. No. | Heads of claim | Amount |
| 1. | Income of deceased | Rs.25,000/- x 12 = Rs.3,00,000/- per annum |
| 2. | Total Income after addition of future prospects at the rate of 25% | Rs.3,00,000/- + Rs.75,000/- = Rs.3,75,000/- |
| 3. | Total dependency after applying Multiplier of 14 | Rs.3,75,000/- x 14 = Rs.52,50,000/- |
| 4. | Dependency after deduction of 1/3rd on account of personal expenses | Rs.52,50,000 – Rs.17,50,000 = Rs.35,00,000/- |
| 5. | Funeral expenses | Rs.15,000/- |
| 6. | Loss of Estate | Rs.15,000/- |
| 7. | Loss of spousal consortium to claimant No.1 | Rs.40,000/- |
| 8. | Loss of parental consortium to claimants No.2 and 3 | Rs.40,000 + Rs.40,000 = Rs.80,000/- |
| | **Total** | **Rs.36,50,000/-** |

7. Learned counsel for the appellant-Insurance Company, *inter alia*, argues that the entire claim has been allowed by the Tribunal below without going into the objections raised by the Insurance Company. Learned counsel further argues that the Tribunal wrongly assessed the income of the deceased. He submits that learned Tribunal fell in error while deciding the quantum of compensation to the tune of Rs.36,50,000/- along with interest

@ 9% per annum, which is against the well established principles laid down by Hon'ble Supreme Court for calculating the amount of compensation. He submits that it was alleged by the claimants that the deceased was 45 years at the time of accident and was working as a Mechanic. Learned Tribunal has taken the income of the deceased as Rs.25,000/- per month. He further submits that admittedly, deceased was paying the rent @ 3000/- per month for the premises, where he was running his auto repair shop. This amount ought to have been deducted from the income of the deceased. Deceased was not an income tax assesse. No proof of income of the deceased has been given by the claimants. Multiplier of 14 as against 13 has been applied. Even the amount of interest @ 9% per annum from the date of filing of claim petition till realization has been awarded, which is also on a higher side. He submits that the quantum of compensation ought to have been calculated as below:-

| | | |
|---|---|---|
| Age | 45 years | |
| Occupation | Mechanic/shop keeper | |
| Claimants | Widow and two children | |
| **Sr. No.** | **Heads of claim** | **Amount** |
| 1. | Income of deceased | Rs.20,000/- X12 =2,40,000/- per annum |
| 2. | Future prospects @25% | Rs.2,40,000/- x 60,000/-=3,00,000/- |
| 3. | Deduction 1/3rd | Rs.3,00,000/-1,00,000/-=2,00,000/- |
| 4. | Multiplier @13 | Rs.2,00,000/-X 13=26,00,000/- |
| 5. | Funeral expenses, loss of estate, loss of consortium | Rs.15,000+15,000+40,000+40,000+40,000= Rs.**1,50,000**/- (as rightly assessed by the Tribunal) |
| 6 | Total | **Rs.27,50,000/-** |

8. I have heard learned counsel for the appellant and gone through the case file.

9. The learned Tribunal allowed the claim, *inter alia*, premised on the following reasoning:-

> *"XXX XXX*
>
> *From the above discussed/referred oral and documentary evidence led by the claimants, it has been proved on record that the deceased was running a shop under the name and style of "Avtar Auto Spare Parts Bhatha Sahib Chowk Ropar" and he was also mechanic of Scooter/Motorcycle. From the expenses referred to above in detail, which was incurred by deceased Balwinder Singh during his life time, it can easily be presumed that the deceased must have been earning Rs.25,000/- per month and consequently, this Tribunal has considered appropriate to assess income of deceased as Rs.25,000/- per month at the time of accident/death. The annual dependency of deceased comes out to be Rs.3,00,000/-. The age of the deceased at the time of accident has already been assessed as 45 years and as per law laid down in* ***Smt. Sarla Verma Vs. Delhi Transport Corporation and another, 2009 (3), Punjab Law Reporter 22,*** *a multiplier of 14 is to be applied.. In the light of the latest decision rendered by the Hon'ble Supreme Court of India in SLP (Civil) No.25590 of 2014 decided on 31.10.2017 in case* ***National Insurance Company Limited Versus Pranay Sethi and others****, an addition of 25% is to be made, where the deceased is self employed or on a fixed salary and is in the age limit of 40 to 50 years. In the present case, the deceased was mechanic and was running a shop and at the time of accident, he was 45 years of age and as such addition of 25% has to be made considering his age, while computing future prospects and as such in these circumstances, the annual income including the future prospects comes out to be Rs.3,75,000/-. Hence, by applying the multiplier of 14, the total dependency comes to Rs.52,50,000/-. Out of the above said total dependency arrived at, as per law laid down in* ***Smt. Sarla Verma's case (supra),*** *amount to the extent of 1/3 share i.e. Rs.17,50,000/- is to be deducted on account of personal and living expenses of the deceased, where the number of dependent family member is 2 to 3. As such after the above said deductions the balance dependency comes out to be Rs.35,00,000/-."*

The contentions raised by learned counsel for appellant seem covered by the impugned award. To my mind, the learned Tribunal rightly computed and awarded the compensation by recording correct findings about income of the deceased and applicable multiplier.

10. There is no room for interference in the aforesaid valid reasons recorded by the MACT, with which I am in agreement. Amount of compensation awarded cannot be said to be excessive or on higher side.

11. No grounds to interfere are made out. Dismissed.

12. Pending application, if any, shall also stand disposed of.

**(ARUN MONGA)**
**JUDGE**

**February 18, 2022**
vandana

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No