IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.352 of 2022 (O&M)
Date of decision:11.02.2022

The United India Insurance Company Ltd. ...Appellant

Versus

Komal Kumari and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Brig. B.S.Taunque, Advocate for the appellant.

ANIL KSHETARPAL, J (Oral)

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

The Insurance Company assails the correctness of the award passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal'), while awarding a sum of Rs.25,26,680/- to the claimants on account of death of late Sh. Hoshiyar, aged about 28 years.

The learned counsel representing the Insurance Company does not dispute the correctness of the findings of the Tribunal with regard to the accident, involvement of the vehicle and the findings on the issue of rash and negligent driving of respondent no.5, the driver of canter bearing registration No.HR-39D-3989. However, he contends that the Tribunal has erred in assessing the income as well as calculating dependency. He contends that in absence of documentary evidence, the Tribunal has wrongly held that late Sh. Hoshiyar was working as a plumber and therefore, assessed the income at Rs.10219/- per month. He submits that the amount of minimum wages in fact are Rs.10129/- and not 10219/- per month. He further contends that the Tribunal has erred in deducting 1/4th from the monthly income on account of personal and living expenses of the deceased. He submits that the deduction should be 1/3rd of the amount assessed as income. He next submits that the Tribunal has wrongly assessed loss of consortium at Rs.1,76,000/-.

This Bench has heard the learned counsel representing the Insurance Company at length and with his able assistance perused the paper book.

On reading the statement of the widow-Smt. Komal Kumari, it is evident that she has deposed that her husband while working as a plumber used to earn Rs.20,000/- per month. In the FIR also, it has been recorded that at the time of accident, the deceased, along with others, was coming back after inspecting the plumbing work. The learned counsel representing the Insurance Company has put searching questions to the witness-Smt. Komal Kumari, however, she stood her ground and the learned counsel failed to impeach the credibility of her deposition.

As regards the alleged error in the amount, it may be noted that the difference is only of Rs.90/- per month. A plumber earns much more than the minimum wages. In Northern India, they are in huge demand of plumbers due to wide-spread construction projects. In such circumstances, there is no error in the assessment of the Tribunal with regard to the income of the deceased.

The next argument of the learned counsel representing the Insurance Company is with reference to the amount of deduction on account of personal and living expenses.

Late Sh. Hoshiyar has left behind a young widow, a very small son and aged parents, who are 65 and 72 years old. In such circumstances, there were as many as 5 members of the family including the deceased. Further a person working as a plumber while earning merely Rs.10219/- per month falls in a low income strata and is not expected to spend much amount on personal expenses due to financial constraints. Hence, the argument of the learned counsel is devoid of any substance.

The last argument of the learned counsel representing the Insurance Company also cannot be accepted because there are 4 claimants.

Reliance, in this regard, can be placed upon the judgment passed in ***Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333*** which has been reiterated by another Division Bench in ***New India Assurance Co. Ltd. vs. Somwati and others, Civil Apepal No.3093 of 2020, decided on 07.09.2020*** and by a three Judge Bench in ***United India Insurance Compnay Ltd. vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410***.

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

Hence, dismissed.

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

February 11, 2022 **(ANIL KSHETARPAL)**
nt **JUDGE**

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