IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-831-1993(O&M)
Date of Order: 15.03.2022

MRS. MUKTA KATHURIA AND OTHERS **..Appellants**

Versus

SHRI KESAR AND OTHERS **..Respondents**

FAO-1127-1993(O&M)

NATIONAL INSURANCE COMPANY LTD. **..Appellant**

Versus

MRS. MUKTA KATHURIA AND OTHERS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurcharan Dass, Advocate
for the appellants.

Mr. Deepak Suri, Advocate
for appellant (in FAO-1127-1993)
for respondent No.3 (in FAO-831-1993).

Mr. Bhuwan Luthra, Advocate
for respondent no.2.

Mr. A.S. Pannu, Advocate
for Mr. H.S. Sawney, Advocate
for respondent No.6 and 7.

ANIL KSHETARPAL, J(Oral)

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

The two connected appeals arising from a common award passed by the Motor Accident Claims Tribunal (MACT), Ludhiana, have come up for disposal.

The learned counsel representing the parties have submitted that the file of the case has been reconstructed after the original was burnt in an accidental fire. The first appeal has been filed by the claimants with a prayer to enhance the amount of compensation whereas, the second appeal has been filed by the Insurance Company.

This Bench has heard the learned counsel representing the parties and with their able assistance perused the paperbook.

Sh. Suresh Kumar Kathuria, aged about 32 years lost his precious life in an automobile accident which took place on 02.06.1988. He left behind a widow, two minor daughters and aged parents. He was employed with M/s Ashoka Dyeing and Finishing Mills, Ludhiana on a monthly salary of Rs.2,000/-. The learned counsel representing the claimants claim that the Tribunal has overlooked the amount of bonus and leave encashment to which the deceased was entitled along with his regular salary. He submits that the deceased was entitled to the bonus at the rate of 8.33% which if calculated comes equivalent to one month's pay and he was also entitled to leave encashment which again if calculated comes to one month's pay. He further contends that the Tribunal has erred while deducting one half of the income of the deceased towards his personal expenses. Further while assailing the correctness of judgment, he contends that the Tribunal has failed to award the amount under conventional heads and increase the income on account of future prospects.

Per contra, the learned counsel representing the Insurance Company contends that the application filed by the Insurance Company to direct the driver and owner of the offending vehicle to produce the driving licence, has been wrongly dismissed.

In the facts of the case, it is considered appropriate to finally decide the appeal filed by the claimants, whereas, the appeal filed by the Insurance Company is required to be remitted back to the Tribunal. As regards the claimant's appeal, it may be noted that there is no dispute that the deceased apart from the salary was entitled to bonus and leave encashment. Thus, the income of the deceased is assessed at the rate of Rs.28,000/- per year in place of Rs.24,000/-. The deceased has left behind a widow, two minor daughters and aged parents. It has been stated that the father of the deceased was blind. Hence, the Court has erred in deducting half of the income towards personal expenses of the deceased. The same is reduced to $1/4^{th}$. Therefore, the dependency comes to Rs.21,000/- per annum. As per the judgment passed by the Five Judge Bench in ***National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC Online SC 1270***. The income is increased by 40% while taking into consideration the increase in the income in future.

Under the conventional heads, each claimants shall be entitled to Rs.40,000/- for loss of spousal, filial and parental consortium, as per the judgment passed by the Hon'ble Supreme Court 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 Appeal No.3093 No.2020, decided on 07.09.2020***, and by a three Judge Bench in ***United India Insurance Company Ltd. Vs. Satinder Kaur @ Satwinder Kaur and others, (2020) SCC Online 410,*** in which it has been approved that each parent is entitled to Rs.40,000/- as consortium.

The claimants shall also be entitled to Rs.30,000/- for loss of estate and funeral expenses.

Thus, the amount is re-calculated as under:-

Heads	**Amount awarded by the Motor Accidents Claims Tribunal (MACT).**	**Amount awarded by the High Court**
Annual Income	Rs.24,000/-	Rs.28,000/-
Future Prospects	NIL	40% Rs.28,000 + Rs.11,200/- _________ Rs.39,200/-
Dependency	½ Rs.24,000/- ¬ Rs.12,000/- _________ Rs.12,000/-	¼ Rs.39,200/- ¬ Rs. 9,800/- _________ Rs.29,400/-
Multiplier	Rs.12,000 X 16 = Rs.1,92,000/-	Rs.29,400 X 16 = Rs.4,70,400/-
Funeral Expenses	NIL	Rs.15,000/-
Loss of estate	NIL	Rs.15,000/-
Parental, Spousal and filial consortium	NIL	Rs.40,000 X 5 = Rs.2,00,000/-
Total amount awarded (Award)	Rs.1,50,000/- (According to the insurance policy, as held by the Tribunal)	Rs.7,00,400/-

The appeal filed by the claimants is allowed.

The learned counsel representing the Insurance Company contends that it was the responsibility of the driver of the offending vehicle to produce the driving licence particularly when an application in this regard was filed. He submits that the Tribunal has erred in dismissing the application and thereafter, proceeding to pass final judgment without granting opportunity to the Insurance Company to challenge the order.

The matter is no longer *res integra* in view of the judgment passed by the Supreme Court in *"**Pappu Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425**"*.

In view thereof, the appeal filed by the Insurance Company is allowed. The dispute with regard to the validity of the driving licence and liability to pay is kept open. The Insurance Company shall at the first instance satisfy the award and thereafter recover the amount from the driver and owner of the offending vehicle if the Tribunal records the aforesaid findings.

The enhanced amount shall be payable with interest at the rate of 6%.

The parties through their counsel are directed to appear before the Tribunal on 01.04.2022 .

With these observations, both the appeals are disposed of.

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

March 15th, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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