116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2308 of 2022 (O&M)
DATE OF DECISION : 15.11.2022

United India Insurance Company Ltd. …..Appellant

Versus

Gurdeep Kaur and Others . ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nitin Gupta, Advocate for the appellant

..

ALKA SARIN, J. (Oral)

The present appeal has been preferred against the award dated 03.01.2022 passed by the Motor Accident Claims Tribunal, Hoshiarpur.

Learned counsel for the appellant would contend that there is no proof of income of the deceased and that the evidence relied upon by the Tribunal to come to the conclusion that the income of the deceased was about Rs.30,000/- per month infact reveals that the loan instalments were not paid by the deceased and hence the conclusion arrived at by the Tribunal is erroneous.

In the present case the brief facts are that on 08.05.2020 Gurdeep Singh, his nephew Jaswinder Singh and his father Gian Singh were returning from Chabbewal to Mahilpur on their respective vehicles. Jaswinder Singh was riding his motorcycle along with the pillion rider Gian Singh. Gurdeep Singh was driving his Swift Dzire car bearing registration No.PB-07-AX-8982 along with another occupant Gurjinder Singh. At about 9.00 a.m. after crossing the bridge of village Bahowal, when they were approaching the Service Station, Bahowal, Jaswinder Singh and Gian Singh, who at that time were on their motorcycle behind the ill-fated car of Gurdeep Singh, saw one truck bearing registration No.PB-08-DS-2154 coming from the side of Mahilpur in a rash and negligent manner and overtook a tractor-trolley and thereafter lost control of the vehicle and dashed into the car of Gurdeep Singh. Resultantly, Gurdeep Singh and the other occupant of the car, Gurjinder Singh, received grievous injuries. Gurdeep Singh succumbed to his injuries. The claim petition was filed by the claimants stating therein that Gurdeep Singh was a taxi driver and was having a number of vehicles and was earning about Rs.50,000/- per month.

The claim petition was contested by the respondents raising the plea that the offending vehicle had falsely been implicated in the case. The appellant herein also filed a separate written statement raising the plea that the driver of the offending vehicle had no valid driving licence and that the truck did not have valid route permit, fitness certificate and registration certificate.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether Gurdeep Singh s/o Pritam Singh died due to rash and negligent driving of respondent No.1 by truck bearing Registration No.PB-08-DS-2154 owned by respondent No.2 and insured by respondent No.3 ? OPC
2. Whether the claimants are entitled to the compensation of Rs.50 Lakhs with 12% interest as prayed for in the claim petition ? OPC
3. Whether the truck bearing Registration No.PB-08-DS-2154 involved in the accident driven by driver was not having valid driving license ? OPR
4. Whether the truck bearing Registration No.PB-08-DS-2154 involved in the accident driven by driver was not having valid route permit, fitness certificate and registration certificate at the time of alleged accident ? OPR
5. Whether the claim petition is not maintainable in the present form ? OPR
6. Relief.

Regarding the income of the deceased, the Tribunal held that the deceased was a taxi driver. As is evident from the statement of AW1, the wife of deceased Gurdeep Singh, she tendered in evidence Ex.A1 to Ex.A15. Ex.A12 was a letter from the Azad Taxi Stand stating that the deceased Gurdeep Singh had membership of the Taxi Stand and was owner of vehicles bearing registration No.PB-01-A-1336 (Tempo Traveller), No.PB-01-9072 (Scorpio) and No.PB-07-AX-8982 (Swift Dzire), which were being driven by the deceased himself and through other drivers. Ex.A13 to Ex.A15 are the loan statements which, according to the learned counsel for the appellant, have wrongly been relied upon by the Tribunal while coming to the conclusion that the income of the deceased was Rs.30,000/- per month. From a perusal of the statement of AW1 Gurdeep Kaur, the wife of the deceased, it is revealed that she had categorically stated that her husband was a professional taxi driver and was earning Rs.50,000/- per month. In the cross-examination, not a single suggestion had been put to the said witness to the effect that the income of the deceased was not as stated or that loan amounts were not being paid by the deceased.

The Supreme Court in the case of **Chandra @ Chanda @ Chandraram & Anr. Vs. Mukesh Kumar Yadav & Ors. [2021 (4) RCR (Civil) 492]** has held as under :

> *"10. It is the specific case of the claimants that the deceased was possessing heavy vehicle driving licence and was earning Rs.15000/- per month. Possessing such licence and driving of heavy vehicle on the date of accident is proved from the evidence on record. Though the wife of the deceased has categorically*

deposed as AW-1 that her husband Shivpal was earning Rs.15000/- per month, same was not considered only on the ground that salary certificate was not filed. The Tribunal has fixed the monthly income of the deceased by adopting minimum wage notified for the skilled labour in the year 2016. In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality. Merely because claimants were unable to produce documentary evidence to show the monthly income of Shivpal, same does not justify adoption of lowest tier of minimum wage while computing the income. There is no reason to discard the oral evidence of the wife of the deceased who has deposed that late Shivpal was earning around Rs.15000/- per month. In the case of Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., (2013) 10 SCC 695 this Court while dealing with the claim relating to an accident which occurred on 08.11.2004 has taken the salary of the driver of light motor vehicle *at Rs.6000/- per month. In this case the accident was on 27.02.2016 and it is clearly proved that the deceased was in possession of heavy vehicle driving licence and was driving such vehicle on the day of accident. Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs.8000/- per month for the purpose of loss of dependency. Deceased was aged about 32 years on the date of the accident and as he was on fixed salary, 40% enhancement is to be made towards loss of future prospects. At the same time deduction of 1/3rd is to be made from the income of the deceased towards his personal expenses. Accordingly the income of the deceased can be arrived at Rs.7467/- per month. By applying the multiplier of `16' the claimants are entitled for compensation of Rs.14,33,664/-. As an amount of Rs.10,99,700/- is already paid towards the loss of dependency the appellant-parents are entitled for differential compensation of Rs.3,33,964/-. Further in view of the judgment of this Court in the case of Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram & Ors., 2018 SCC OnLine SC 1546 = (2018) 18 SCC 130 the appellants are also entitled for parental* *consortium of Rs.40,000/-each. The finding of the Tribunal that parents cannot be treated as dependents runs contrary to the judgment of this Court in the case of Sarla Verma (Smt). & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The judgment in the case of Kirti & Anr. v. Oriental Insurance Company Limited, (2021) 2 SCC 166 relied on by the counsel for the respondent would not render any assistance in support of his case having regard to facts of the case and the evidence on record."*

In the present case, even if it is taken that there is absence of any documentary proof regarding the income of the deceased, some guess work is required to be done as laid down in **Chandra @ Chanda @ Chandraram & Anr.** *(supra).* The uncontroverted fact as emerging from the evidence led is that the deceased had three cars registered in his name and he was plying the said vehicles as taxis himself and through other drivers. It is again uncontroverted that the deceased was a taxi driver. The instalments towards the loan amounts were about Rs.25000/- per month. Though as pointed out by the learned counsel for the appellant some cheques towards the instalments had bounced, however, there are installments which were being paid also. Hence, if a person is paying an amount of Rs.25000/- per month towards loan instalments his income can safely be presumed to be above the said amount. No suggestion was put to the claimants' witnesses qua the said loan account statement.

In view of the above, I do not find any ground to interfere in the award passed by the Tribunal. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.11.2022 **(ALKA SARIN)**
parkash **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO