IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 406/2021(O&M)

Date of decision:02/12/2022

Royal Sundaram General Insurance Co. Ltd.

………………Appellant

Vs.

Guddi and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Dinesh Kumar Prajapati,Advocate for the appellant/ Insurance Company.

None for the respondents/claimants.

Nidhi Gupta,J.

This appeal has been filed by the Insurance Company challenging the Award dated 3.3.2021 passed by learned Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal'), in MACP No.215/2019 whereby the claimants have been awarded compensation of Rs.25,84,240/- on account of death of Satish Kumar in a motor vehicular accident that took place on 21.01.2019 due to rash and negligent driving of Car bearing registration No.HR-05-AL-2351 (hereinafter 'the offending vehicle'), by respondent no.6-Driver which hit the deceased by coming on wrong side due to which Satish Kumar fell down and received serious, grievous and multiple injuries on various parts of his body. He was taken to Government Hospital, Karnal where he was declared dead.

Despite the service being complete as far back as on 16.12.2021, no one has put in appearance on behalf of the claimants/driver and owner of the offending car. Accordingly, this case is being decided in their absence.

It has been submitted by the learned counsel for the Insurance Company that the ld. Tribunal has incorrectly taken the income of the deceased as Rs.10,000/- per month on the basis of D.C. Rate whereas the deceased being unskilled labourer at the relevant time, his income should have been calculated on the basis of minimum wages for unskilled labourer, which at the relevant time was Rs.8280/- per month. The second ground on which the Award is assailed is that the deduction of $1/5^{th}$ has been incorrectly made by the Tribunal and the same should have been 50% as the deceased was admittedly a bachelor.

Heard learned counsel for the appellant-Insurance Company.

A perusal of the record shows that Tribunal in para 8d of the Award has recorded as follows:-

> "8d. Hence, as a sequel to my above discussion, the income of deceased Satish Kumar is taken as 10390/-. He was 22 years of age as determined by this Tribunal and was private employee, therefore, 40% of said amount is added as future prospects in view of the latest judgment passed by Hon'ble Supreme Court of India in case titled as **National Insurance Company Limited v Pranay Sethi and others, Special Leave Petition (Civil) No.25590 of 2014.** Thus, an amount of Rs.4156/- is taken to be monthly income of deceased after addition his future prospects. As the deceased was a unskilled worker and had five dependents, therefore, 1/5 of the said amount is liable to be deducted for his personal living expenses. In other words, an amount of Rs.2909.2/-

(Rounded off Rs.2910/-) is to be deducted towards the personal living expenses of deceased out of the said amount of Rs.11,636/-. Thus, the multiplicand, i.e. (Income + Future prospects)- deduction comes to Rs.11,636/- (Rounded off Rs.11,640/-) per month. Thus, the yearly income of the deceased comes to Rs.11,640/- multiplied by 12, which comes to Rs.1,39,680/-. Since the deceased was 22 years of age as on the date of his death. Thus, as per law laid down by Hon'ble Apex Court of India in case titled as **Smt.Sarla Verma & Others v Delhi Transport Corporation and another (2009)6 SCC 121**, the multiplier of 18 is applicable in the present case. Therefore, the total annual loss of dependency comes to Rs.1,39,680/- multiplied by 18 which comes to Rs.25,14,240/-."

During the pendency of the appeal, appellant filed CM 6235-CII of 2021 and placed on record Annexures A-1 and A-2. A perusal of Annexure A-1 shows that it is the affidavit tendered by way of evidence, and the cross-examination of claimant/respondent no.1 - Guddi. In her cross examination PW-1 Guddi has stated that her deceased son was unmarried. It has also been admitted therein that her husband Dalip was doing labour work; and also that her son Gaurav was sometime doing labour work with his deceased brother and earning Rs.500 per day, but that she had no documentary proof of income, profession and age, but she will produce later on. However, no proof with regard to the profession or income has been placed on record.

Further, Annexure A2 is the affidavit of Gaurav, claimant/ respondent No. 5 herein, and brother of the deceased. In his cross-examination said Gaurav has clearly admitted that " *I am doing the work of interlocking tiles. I am a helper and earning Rs.500 per day."*

Accordingly, the above evidence shows that the findings of the Tribunal that the deceased had five dependents or he was earning Rs. 10,390/- per month is incorrect. Therefore, I accept the submissions made on behalf of the appellant-Insurance Company to the extent that income of the deceased be taken as Rs. 8280/- per month being the Minimum Wages admissible to unskilled labourers under the Notification of the Haryana Government at the relevant time. It has further come on record that the respondent No. 2 Dalip, father of the deceased has died during the pendency of this Appeal. Therefore, in conformity with Para 32 of the judgment of the Hon'ble Supreme Court in **Pranay Sethi (supra),** deduction of 1/3rd ought to have been made**.**

Accordingly, the compensation payable to the claimants is reworked as under:-

Sr. No.	Head	Amount (in Rupees)
1	Monthly income	8280
2	40% future prospects	8280+40% = 11592
3	1/3 deduction qua personal expenses deceased being unmarried. i.e. Rs.5796/-	11592-3864= 7728-00
4	Annual income	7728x12= 92,736/-
5	Multiplier	18
6	Loss of dependency after applying multiplier	18x92736/-= 16,69,248-00
7	Loss of estate	15,000
8	Loss of consortium	40,000
9	Funeral expenses	15,000

10	Total Compensation	17,39,248/-
11	Excessive compensation	25,84,240 (-) 17,39,248 = 8,44,992/-

Interest @ 6% is granted from the date of filing of the claim petition till actual payment.

Pending application(s),if any, also stand disposed of.

02.12.2022 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**