IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3733 of 2011 (O&M)
Date of decision : April 21, 2022

Oriental Insurance Company Ltd.

....Appellant

Versus

Joginder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent Nos.1 to 4.

None for respondent No.5.

PANKAJ JAIN, J.

Insurance Company is in appeal against the Award passed by the Motor Accidents Claims Tribunal, Chandigarh (for short, 'the Tribunal') whereby compensation of Rs.7,40,000/- has been awarded to the claimants on account of death of Jasvir Kaur in the motor vehicular accident dated 18th February, 2008.

2. As per the claim petition, on 18th February, 2008 at about 7:30 PM, the deceased Jasvir Kaur was crossing dividing road of Sector 20-21 from the side of Sector 21 towards Sector 20 Chandigarh. After crossing the one lane when she was crossing the other lane and crossed more than half of the road at that time a three wheeler bearing registration No.PB-12-H-1975 came from the side of Sector 18-19, 20-21 Chowk, Chandigarh and

struck against the deceased. The aforesaid three wheeler was being driven at a fast speed, rash and negligent manner by Arjun, respondent No.1. As a result of this accident deceased fell on the road and received multiple injuries. She succumbed to some injuries on 20th February, 2008

3. Ld. Tribunal awarded total compensation of Rs.7,40,000/- to the claimants.

4. The appellant is primarily aggrieved of the finding recorded by the Tribunal to the effect it has taken the contribution of deceased Smt. Jasvir Kaur @ Rs.4,000/- per month, being a housewife. Strong reliance has been placed upon the law laid down by Apex Court in the case of **'Lata Wadhwa and others vs. State of Bihar and others', AIR 2001 SC 3218** wherein the contribution of housewife in the age group of 34-59 years has been assessed @ Rs.3,000/- per month.

5. Per contra, Counsel for the claimants submits that the income of deceased has been rightly assessed @ Rs.4000/- per month relying upon judgment of this Court passed in **FAO No.482 of 2010** titled as **'ICICI Lombard General Insurance Company Limited vs. Ram Niwas and others'**, on 27th April, 2010 wherein also **Lata Wadhwa's** case (supra) was referred to and relied upon. Counsel for the claimants further asserts that rather it is a case of enhancement of compensation and this Court must exercise its jurisdiction under Order 41 Rule 33 of the CPC to do the substantive justice.

6. Having heard Ld. Counsel for the parties and having perused

the record with their able assistance, this Court finds that the plea raised by counsel for the appellant sans merit. It needs to be noticed here that the contribution of a housewife towards household was taken @ Rs.3,000/- per month in **Lata Wadhwa's case** (supra) and the date of accident in the said case was 3rd March, 1989. In the present case, the accident took place on 18th February, 2008. Post 1990 the economic reforms have not only led to devaluation of rupee but have also increased the cost of living owing to inflation. Thus, the contribution of a housewife towards the households in 2008 @ Rs.4000/- per month cannot be said to be on the higher side. It needs to be noticed that Motor Vehicles Act, 1988 is a social welfare legislation and has to be given purposive interpretation. It cannot be arrested in a time capsule. The provisions have to be interpreted in a way that they keep pace with the social and economic changes in the country.

7. Adverting to the plea raised by the respondents, it needs to be noticed that the claimants have neither preferred an appeal nor have opted to file any cross-objection. The question that arises for consideration of this Court is whether this is a case where jurisdiction under Article 41 Rule 33 of the CPC should be exercised or not? Apex Court in the case of **'Ranjana Prakash and others vs. Divisional Manager, New India Assurance Co. Ltd. and another', 2011 ACJ 2418** held that :–

> *"7. This principle also flows from Order 41, rule 33 of the Code of Civil Procedure which enables an appellate court to pass any order which ought to have been passed by the trial*

court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41, rule 33 of the Code can, however, be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the Tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay compensation, along with the owner, even though the claimants had not challenged the non-grant of relief against the insurer. Be that as it may.

8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is less than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by claimants seeking enhancement of compensation."

8. Section 169 of the Act vests power of Civil Court in Tribunal. It declares the Tribunal to be a Civil Court thus the provisions of Order 41 Rule 33 CPC are applicable to the proceedings under the Act. That being so, in the considered opinion of the Court the Award passed by the Ld. Tribunal needs to be modified in the light of guidelines laid down in **'National Insurance Company Limited vs. Pranay Sethi and others', (2017) 16 SCC 680**. The contribution of the deceased is maintained @ Rs.4,000/- per month. As per **Pranay Sethi's** case (supra), 40% of the same needs to be awarded as future prospects. Rs.40,000/- needs to be awarded to each of the claimants for loss of consortium. As per law laid down by Apex Court in case of **'Smt. Sarla Verma & others vs. Delhi Transport Corporation & another' (2009) 6 SCC 121**, multiplier of 15 has been rightly applied by the Tribunal. Sum of Rs.10,000/- awarded on account of funeral expenses & last rites and sum of Rs.10,000/- towards loss of estate, are maintained.

9. As a sequel of the aforesaid discussion, the Award passed by the Ld. Tribunal is modified to the aforesaid extent.

10. The total compensation be calculated accordingly and paid to the claimants/respondents No.1 to 4.

11. Needless to say that any amount already paid to the claimant shall be set off.

12. Appeal stands disposed off accordingly.

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

April 21, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

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