IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5583-2014(O&M) and
XOBJC-27-CII-2015

Reserved on: 13.09.2022

Pronounced on: September 29, 2022

Reliance General Insurance Co. Ltd. …Appellant

Versus

Neetu Dogra and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Sanjeev Kodan, Advocate, for the appellant.

Mr. Dinesh Mahajan, Advocate for applicants-respondents No.1 to 4.

Mr. Ramandeep Singh, Advocate for Respondent No.5.

****

HARKESH MANUJA, J

CM-5100-CII-2015:

This is an application seeking condonation of delay of 50 days in filing the cross-objections.

For the reasons mentioned in the application which is supported by an affidavit, sufficient cause has been shown for condoning the delay, thus, the same is allowed. Delay of 50 days in filing the cross-objections is condoned.

MAIN CASE:

This order of mine shall dispose of an appeal filed at the instance of Insurance Company impugning the award dated 07.05.2014 passed by learned Motor Vehicle Accident Claims Tribunal, Pathankot(hereinafter referred to as “the Tribunal”), on the issue of quantum of compensation. Further, this order shall also dispose of cross-objections filed at the instance of Claimants-Respondent No. 1 to 4 seeking enhancement of compensation.

For convenience, the facts are taken from FAO No. 5583-2014, filed at the instance of appellant-Insurance Company.

The facts, in brief, are that on 16.04.2012 at about 12.30 PM deceased Rajesh Dogra aged 32 years while standing outside Guraya Marriage palace at Mukerian, then a car bearing No. PB-05-P-0003, being driven by respondent No.1 (in the claim petition) in a rash and negligent manner, dashed against Rajesh Dogra, who fell down and received injuries. He was taken to Civil Hospital, Mukerian from where he was referred to Fortis Escort Hospital, Amritsar. Later, he succumbed to the injuries on 22.04.2012. Thereafter, an FIR No. 56 dated 22.04.2012, under Sections 279, 304-A of IPC was registered against respondent No. 1 at Police Station Mukerian.

On account of the death of Rajesh Dogra, respondents No. 1 to 4 herein being dependents filed a claim petition before Learned Tribunal at Pathankot claiming a sum of Rs. 50 lakh as compensation, pleading that the accident took place on account of rash and negligent driving of the offending vehicle i.e. respondent No. 5 herein. It was stated that the deceased, at the time of accident, was working as a contractor and supplier in the Government MES Army Department and was also running a Hotel under the name and style of M/S Crystal Hotel and Restaurant, Dhakki Road, Pathankot and was earning a sum of Rs. 30,000/- PM. In response, respondent No. 5 herein filed written statement denying the factum of accident as well as rash and negligent driving alleged against him.

Holding respondent No. 5 herein to be rash and negligent while driving the offending vehicle, the learned Tribunal partly allowed the claim petition awarding a sum of Rs.28,23,000/- as compensation along with interest @ 6% per annum from the date of filling of claim petition till actual realization. Ld. Tribunal assessed the yearly income of deceased as Rs.1,63,000/- per annum. After addition of 30% towards future prospects; making deduction of 1/3rd towards his personal expenses and by applying multiplier of 17; total dependency of the deceased was calculated at Rs.23,12,000/-(1,36,000 X 17). Apart from that, claimant/respondent no. 1 was held entitled for Rs.1 lakh as consortium and Rs.25000 as funeral expenses; whereas, claimants/ respondents No. 1 to 4 were held entitled for Rs.1 lakh as loss of love and affection. In addition, based on the medical bills regarding the expenses incurred on the treatment of deceased, a sum of Rs.2,86,000/- was also awarded to claimant/ respondent No.1.

In the present appeal, the appellant Insurance Company has challenged the award dated 07.05.2014 seeking reduction of amount of compensation. On the other hand, claimants/ respondents no. 1 to 4 have filed cross objections praying for enhancement of the same.

Learned counsel for the appellant/Insurance Company submits that the learned Tribunal fell into an error while determining income of the deceased. He further submits that loss accrued to the dependents from business of hotel was supervisory loss as the hotel was still existing and owned/ run by the family and thus, the income from same, based on ITR's of deceased, was not to be considered for the purpose of determining compensation. In this regard, he places reliance upon **"New India Assurance Co. Ltd. VsYogesh Devi &Ors"**, reported as 2012(2) R.C.R

(Civil) 536. He further contends that multiplier of 16 has to be applied instead of 17, considering the age of the deceased to be 32 years and the compensation of Rs.1 lakh under the head of Loss of Love and Affection was wrongly awarded in favour of claimants/ respondents 1 to 4 by the Ld. Tribunal.

On the other hand, learned counsel for claimants/ respondents No. 1 to 4 submits that the income of the deceased has been correctly assessed. He further submits that, in case, the plea of appellant-Insurance Company regarding supervisory loss was accepted, claimant/ respondent No. 1 herein being a house wife, still the claimants-dependents were entitled for compensation towards salary of a Manager required to be employed for running the hotel. Further, it was also submitted that considering the number of dependents/ claimants to be four, deduction should have been $1/4^{th}$ in place of $1/3^{rd}$ towards personal expenses. Ld. Counsel for claimants/ respondents No. 1 to 4 also submits that the amount of compensation awarded under other conventional heads needs to be enhanced.

Having heard the arguments advanced by learned counsel for the parties and gone through the paper-book as well as the cross-objections filed at the instance of claimants/ respondents No.1 to 4 herein, I find merit in the contention raised on behalf of the appellant so far as the question of income of deceased from hotel is concerned. As the said asset would remain with the family of deceased, and shall continue to derive income to their benefit, therefore, the said income cannot be considered for the purpose of determining the compensation. However, during the lifetime of deceased, he would have been managing the business of hotel himself, but, now claimants have to engage an expert to manage the same, therefore, the loss of income which claimants/ respondents no. 1 to 4 would have to suffer, is the amount required by them to engage a Manager, towards his salary. Thus, in the present case, the notional income of the Manager has to be determined. Although, in this regard, learned counsel for respondents No.1 to 4 refers to the case of **Yogesh Devi's** (supra), to contend that the Hon'ble Supreme Court has taken the monthly salary of a Manager to be Rs.10,000/- per month, however, in the present facts and circumstances, I deem it appropriate to take into consideration the minimum wages for a highly skilled worker in the field of hotels, restaurants etc. in State of Punjab which was around Rs.5434/- (w.e.f.01.03.2012). Thus, considering the aforesaid, and in order to balance the equities, it would be appropriate in case, the notional income of a Manager, in the present facts and circumstances, is fixed at Rs.6000/- PM. As far as income of deceased being a government contractor is concerned, it was assessed as Rs.36,250/- per annum. I find no reason to interfere with the same. Therefore, the total loss of income caused to the dependents is calculated as Rs.1,08,250/- per annum (i.e. Rs.72000/- + Rs.36250/-). I derive my aforesaid view from the judgment of **Yogesh Devi's** case(supra), relied upon by learned counsel for the appellant and relevant para Nos. 11 and 13 of the same are reproduced hereinunder:-

> *"11. Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the above-mentioned three mini- buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the*

above-mentioned three buses. The asset (three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for engaging the service of a manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants. In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the above-mentioned asset on account of the above-mentioned factors. Unfortunately, no such evidence was led by the claimants.

13. The High Court opined that the deceased would have contributed an amount of Rs. 16,000/- per month to the dependents, whereas the Tribunal opined that the deceased would have contributed an amount of Rs. 5,000/-. Both the Courts below proceeded to arrive at the above-mentioned amounts on the basis that as a driver of one of the buses, he was getting a salary of Rs. 3,900/- per month. In the circumstances, making a reasonable conjecture that somebody to be employed for the purpose of managing the business of the three mini-buses, would certainly demand a higher salary than a driver, we think it reasonable to notionally fix the salary of such manager at Rs. 10,000/- per month.

> *The said amount coupled with the salary of one driver, i.e., Rs. 3,900/- would be the loss sustained by the family from the income arising out of the asset. Computed on the basis of the said figure and applying the same multiplier of 16 which was applied by both the courts below, the amount of compensation payable to the claimants would be: 13,900 x 12 x 16 = Rs. 26,68,800/-."*

Besides this, Learned Tribunal deducted 1/3rd from the total income of deceased towards his personal expenses and made an addition of 30% towards future prospects. However, in my opinion, by applying the principle of law laid down by Hon'ble Supreme Court in the case of **Smt. *Sarla Verma* and Others Versus Delhi Transport Corporation and Another,** reported as 2009(3) R.C.R (Civil) 77, considering the age of deceased at the time of his death to be 32 years and number of dependents being 4, only 1/4th of the total income of deceased should have been deducted towards his personal expenses and an addition of 40% was required to be made towards future prospects, he being self-employed. Furthermore, multiplier of 16 was to be applied instead of 17 as per the law laid down in **Sarla Verma's(Supra)** case.

Apart from the above, Ld. Tribunal awarded Rs.1 lakh towards consortium for claimant/ respondent No.1 -wife and Rs.1 lakh on account of loss of love and affection for claimants/respondents no. 1 to 4, besides awarding Rs.25000/- towards funeral expenses. Keeping in view the law laid down by Hon'ble Supreme Court in the cases of**"National Insurance Company Limited Versus Pranay Sethi and Others"** reported as 2017(4) R.C.R CIVIL 1009 and **"Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram &Ors"** reported as 2018(4) R.C.R(Civil)

333, compensation under the head of consortium has to be awarded to all the four appellants i.e. spousal, parental and filial @ Rs.44000/- each i.e. (Rs.44,000 X 4 = Rs.1,76,000/-), in addition, sum of Rs.16,500/- on account of loss of estate, and a further sum of Rs.16,500/- towards funeral expenses, as against Rs.25,000/- awarded by learned Tribunal.

Further, besides it, award of compensation under the head of loss of love and affection is liable to be set aside in view of the law laid down by the Hon'ble Supreme Court in case of "**Satinder Kaur @ Satwinder Kaur & Others Vs. United India Insurance Co. Ltd.**" reported as 2020(3) R.C.R Civil 75. Relevant Para 8 of abovementioned judgement is reproduced hereinafter:-

> *"The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head."*

Thus, in view of the discussions made hereinabove, the claimants/ respondents No.1 to 4 herein are entitled for following compensation, as detailed in the table given hereunder :-

Sr.No.	**Particulars**	**Amount(Rs.)**
1.	Annual income of deceased	Rs.1,08,250/-
2.	Add 40% of future prospects	Rs. 43,300/-
3.	Total Income	Rs. 1,51,550/-
4.	After deduction of $1/4^{th}$	Rs. 1,13,663/-
5.	Multiplier of 16 as per age of 32 years	Rs. 18,18,600/-
6.	Funeral Expenses	Rs. 16,500/-
7.	Loss of Consortium	Rs. 1,76,000/-
8.	Loss of Estate	Rs. 16,500/-
9.	Medical Expenses	Rs.2,86,000/-,

	TOTAL COMPENSATION:	Rs.23,13,600/-

The grant of interest @ 6% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and othersVs. National Insurance Company Limited and other**, (2009) (4) SCC 513 approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another**, 2014 (1) RCR (Civil) 443, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claimants shall be deducted from the compensation.

The present appeal as well as X-objections are disposed of in the manner indicated hereinabove.

September 29, 2022 **(HARKESH MANUJA)**
sanjay **JUDGE**

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*