IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

243

FAO-3755-2017 (O&M) AND
XOBJC-212-CII-2017
Decided on : 01.06.2022

Magma HDI General Insurance Co. Ltd.

. . . Appellant(s)

Versus

Jagtar Singh and otheres

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Pankaj Mehta, Advocate
for the appellant-Insurance Company.

Mr. HPS Isher, Advocate
for respondent No.1

None for respondent No.2.

Mr. Pankaj Katia, Advocate
for respondents No.3 & 4/cross-objectors.

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<u>MANJARI NEHRU KAUL, J. (Oral)</u>

This order shall dispose of FAO-3755-2017 and Cross-Objections No. 212-CII-2017, as they arise from the same award dated 17.03.2017, passed by the learned Motor Accident Claims Tribunal, SAS Nagar (Mohali) (hereinafter referred to as 'the Tribunal')

The instant appeal has been preferred by the Insurance Company (Insurer of the offending vehicle i.e. Tipper No. PB-65R-3306) against award dated 17.03.2017, passed in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, by the claimants (parents of the deceased Amar Singh), whereby, the following compensation was awarded to them:-

Sr. No.	***Head***	***Amount***
1.	Monthly Income	Rs.9000/-
2.	Annual Income	12x9000=Rs.1,08,000/-

3.	Future Prospects (50%)	108000x40/100 = Rs.54,000/-
4.	Total Annual Income	108000+54000=Rs.1,62,000/-
5.	Deduction (½)	Rs.81,000/-
6.	Annual Dependency	Rs.81,000/-
7.	Multiplier	15
8.	Total Dependency	Rs.81,000x15=Rs.12,15,000/-
9.	Loss of Consortium	--
10.	Loss of love and affection	Rs.20,000/- in total
11.	Funeral Expenses	Rs.25,000/-
12.	Total Compensation	Rs.12,60,000/-

The claimants/respondents No.3 & 4 have also filed cross-objections claiming therein that though the deceased was 23 years of age, however, an incorrect multiplier of '15' had been applied instead of '18'. Besides this, no loss of filial consortium was given to the claimants by the Tribunal while assessing the compensation in question.

A few facts as pleaded in the claim petition by the claimants/respondents No.3 & 4, may be noticed. On 05.02.2014, Amar Singh (hereinafter referred to as 'the deceased') was standing on the side of the road along with his motorcycle bearing registration No. PB-65(T)AA-6652. In the meantime, the offending vehicle came in a rash and negligent manner and hit the deceased, as a result of which, he was dragged upto a considerable distance, as a result of which, he sustained multiple injuries. The deceased was removed to the hospital, however, he succumbed to his injuries. The deceased was stated to be a mason earning about Rs.15,000/- p.m.

Learned counsel for the appellant-Insurance Company submits that the Tribunal gravely erred in assessing the income of the deceased as Rs.9000/- p.m. without any cogent evidence being led *qua* the income of the deceased, and also the factum of the deceased being a mason. He further submits that the driver of the offending vehicle was carrying an invalid licence. A report bearing No. RTO-MKT/RTI/G-30/8/3144/ Dated Mokokchung, 08.09.2016 issued by the RTO, Mokokchung, NAGALAND, though, was produced by the appellant before the Tribunal, however, it was not considered by the Tribunal, which erroneously fastened the liability on the appellant-Insurance Company, to pay compensation. He further submits that the Tribunal erred in assessing future prospects to the tune of 50%, which was not in consonance with the settled law and hence, the compensation awarded required to be set aside.

Learned counsel for the respondents/claimants/cross-objectors has opposed the submissions made by the counsel for the Insurance Company by urging that the compensation awarded was on the lower side, which required to be re-assessed and modified as per the settled law in in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***, ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR (Civil) 333***.

Learned counsel for respondent No.1 (owner), has, however, strongly disputed the submissions made by the counsel for the appellant-Insurance Company with respect to the driver of the offending vehicle being in possession of an invalid driving licence. Learned counsel in support, he has placed reliance upon ***New India Assurance Company Ltd. Vs. Shanti and others (FAO-1324-2016)*** decided on ***06.09.2019***.

I have heard learned counsel for the parties and perused the relevant material on record.

The submissions made by the learned counsel for the appellant-

Insurance Company *qua* the driver of the offending vehicle being in possession of an invalid licence, is devoid of merit. No doubt, the licence in the possession of the offending driver was issued by the RTO, Nagaland, however, no witness was examined by the Insurance Company to prove that the said licence had not been issued by the said authority. In case the driver of the offending vehicle did not have in his possession a driving licence, in the form of a smart card, as per the rules and as required by the State of Nagaland, he at best could be challaned for being in possession of an invalid licence, but it would not in any manner prove that the offending driver was not duly licenced to drive a vehicle, for the purpose of the Motor Vehicles Act, 1988.

This Court, however, concurs with the submissions made by the counsel for the appellant-Insurance Company that the monthly income of the deceased has been assessed on the higher side. Since, no cogent evidence was produced by the claimants *qua* the deceased being a mason or even *qua* the income of the deceased, the minimum wages as notified by the State Government for the relevant period, in respect of semi-skilled workers should have been taken by the Tribunal while assessing the monthly income of the deceased. As per the State notification for the relevant period i.e. the year 2013, the minimum wages of a semi-skilled worker were fixed at Rs.7247/- p.m. The income of the deceased is thus reduced from Rs.9000/- p.m. to Rs.7247/- p.m. Still further, the Tribunal erred in granting 50% compensation towards future prospects, which in fact, as per the settled law should have been 40%. Compensation *qua* future prospects, therefore, stand modified from 50% to 40%. However, since the deceased was admittedly 23 years of age, the correct multiplier applicable in the instant case would be '18' and not '15'. Besides this, the claimants, who are parents of the deceased, are also entitled to filial consortium in the sum of Rs.40,000/- each. This Court is, however, of the opinion that the compensation awarded under loss of estate and funeral expenses, requires to be re-assessed in consonance with the settled law. The Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each, to be awarded for loss of estate & funeral expenses. Still further, it has been held that the aforesaid amount would be further subject to 10% enhancement after every three years. Therefore, the appellants would be entitled to 10% enhancement *qua* the compensation under conventional heads. Hence, the amount of compensation under the conventional heads stands modified to Rs.16,500/- each, for loss of estate & funeral expenses and Rs.44,000/- each for loss of filial consortium, for each of the two claimants, who are parents of the deceased Amar Singh.

Resultantly, the compensation payable to the claimants would be as follows:-

Sr. No.	***Head***	***Amount***
1.	Monthly Income	Rs.7247/-
2.	Annual Income	12 x 7247=Rs. 86,964/-
3.	Future Prospects 40%	86,964 x 40/100 = Rs.34,786/-
4.	Total Annual Income	Rs.91,750/-
5.	Deduction towards personal expenses (50%)	Rs.45,875/-
6.	Loss of Annual future earnings	Rs.45,875/-
7.	Multiplier	18
8.	Loss of Future earnings	Rs.45,875 x 18 = Rs. 8,25,750/-
9.	Loss of filial consortium	Rs.44,000/- x 2 = Rs.88,000/-
10.	Funeral Expenses	Rs.16,500/-
11.	Loss of Estate	Rs.16,500/-
12.	Total Compensation	Rs.9,46,750/-

The claimants are, therefore, held entitled to a total sum of Rs.9,46,750/- as compensation along with interest @ 8% per annum from the date of filing of claim petition till its actual realization.

With these modifications, the present appeal of the Insurance Company and cross-objections stand disposed off in the above terms.

(MANJARI NEHRU KAUL)
JUDGE

June 01, 2022
J.Ram

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