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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5265-2017 (O&M)
Reserved on : 19.05.2022
Date of Decision : 26.05.2022

Oriental Insurance Company Ltd. ....Appellant

VERSUS

Mandeep Kaur & Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Satpal Dhamija, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for respondent Nos.1 to 5/cross-objectors.

ALKA SARIN, J.

The present appeal has been preferred by the insurance company against the award dated 07.02.2017 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal'). Cross-objections have been filed by the respondent Nos.1 to 5/claimants seeking further enhancement of the compensation awarded.

Brief facts relevant to the present *lis* are that on 05.02.2016 at about 09.00 p.m. the deceased, Surjit Singh, was going on the road leading from Landran to Banur as a pillion rider on motorcycle bearing Registration No.PB-65-Y-6129. The driver of the vehicle was Lakhbir Singh, respondent No.6 herein. When they reached Village Bairopur, District Mohali, an unknown car came from behind and struck against the motorcycle. The number of the car could not be noted due to darkness. As a result, both

Surjit Singh and Lakhbir Singh fell on the road. The deceased, Surjit Singh, received serious injuries and eventually succumbed to the said injuries. The claim petition was filed by the claimants who are the widow, minor children, father and mother of the deceased on the ground that the accident was caused due to the composite negligence of the driver of the unknown vehicle and the driver of the motorcycle who was riding the motorcycle in a rash and negligent manner. It was further stated in the claim petition that the deceased, Surjit Singh, was 33 years of age and was working as a mechanic and earning Rs.12000/- per month. FIR No.34 dated 06.02.2016 was registered under Sections 279/304-A of the Indian Penal Code, 1860 (IPC) at Police Station Sohana, District SAS Nagar.

Respondent No.7 herein (respondent No.2 in the claim petition) did not appear before the Tribunal and was proceeded against *ex parte*. Respondent No.6 herein (respondent No.1 in the claim petition) appeared and filed written statement admitting the accident but submitted that the accident did not take place due to his negligence as he was driving his motorcycle at slow speed. The appellant-insurance company (respondent No.3 in the claim petition) filed its separate written statement by raising preliminary objections regarding maintainability and collusion. It was stated in the written statement that the claim petition was not maintainable as the case was neither covered under the Workman's Compensation Act nor under third party insurance. It was further stated that the driver of the motorcycle was not having a valid and effective Driving Licence and as such the insurance company was not liable to pay any compensation. On merits, it was denied that the deceased was 33 years of age and earning Rs.12,000/- per month.

Issue No.1 as to whether the accident was caused on account of rash and negligent driving of vehicle bearing No.PB-65-Y-6129 by respondent No.6 herein was answered by the Tribunal in favour of the claimants holding it to be composite negligence.

On the basis of the pleadings of the parties and evidence produced, the following compensation was awarded by the Tribunal :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	7500/-
2	Annual income of the deceased	90000/-
3	Annual income after 1/3rd deduction towards personal expenses	60000/- (90000-30000)
4	Multiplier 16	960000/- (60000x16)
5	Future prospects @ 50%	480000/-
6	Total income of the deceased	1440000/- (960000+480000)
7	Funeral expenses	25000/-
8	Loss of consortium Parental : Rs.200000/- (Rs.100000x2) Filial : Rs.100000/- (Rs.50,000x2) Spousal : Rs.100000/-	400000/-
	Grand Total	18,65,000/-

The Tribunal awarded interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment.

Learned counsel for the appellant-insurance company has submitted that there is no evidence on the record to show that the motorcycle was being driven in a rash and negligent manner and it was a straight-forward case of hit and run and, hence, the appellant-insurance company which had insured the motorcycle was not responsible. Learned counsel for the appellant-insurance company has further argued that the compensation awarded was not in accordance with the law laid down by Hon'ble Supreme Court in the cases of **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [2018(18) SCC 130]; National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 Supreme Court Cases 680];** and **Sarla Verma and Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**.

Per contra, learned counsel for respondent Nos.1 to 5/claimants has contended that there is no scope for interference in the award passed by the Tribunal.

Heard.

In the present case, the argument raised by learned counsel for the appellant-insurance company that there was no evidence qua the fact that the motorcycle bearing Registration No.PB-65-Y-6129 was being driven in a rash and negligent manner deserves to be rejected on the ground that the eye-witness Pardeep Kumar, who was examined as PW-1, had specifically stated in his examination-in-chief that the motorcycle bearing Registration No.PB-65-Y-6129 was being driven at fast speed and in a rash and negligent manner by the driver. The statement as well as the cross-examination of PW-1 has been handed over in Court by the counsel for the appellant-insurance company and a perusal of the same reveals that no suggestion was put to PW-1, Pardeep Kumar, in his cross-examination that the driver of the motorcycle was not driving the vehicle in a rash and negligent manner. The appellant-insurance company failed to give any suggestion whatsoever to the eye-witness of the accident and in the absence of the same this Court is unable to accept the argument raised by learned counsel by the appellant-insurance company and the same stands accordingly rejected.

The second argument raised by learned counsel for the appellant-insurance company deserves to the accepted inasmuch as a perusal of the award passed by the Tribunal reveals that an addition of 50% had been made towards future prospects whereas the same ought to have been 40%. The amount awarded towards consortium is also on the higher side.

As regards the cross-objections (XOBJC-203-CII-2017) filed by the respondent Nos.1 to 5/claimants, learned counsel for the cross-objectors/respondent Nos.1 to 5/claimants has contended that the salary of the deceased as assessed by the Tribunal is on the lower side inasmuch as the salary has been assessed as that of an unskilled worker. He has further contended that even in the post-mortem report as well as in the FIR, it is clearly mentioned that the deceased was working as a mechanic and, hence, he ought to have been treated as a skilled worker or in any case a semi-skilled worker.

Per contra, learned counsel for the appellant-insurance company has contended that in the absence of any evidence, the salary of the deceased has rightly been assessed by the Tribunal.

Before the Tribunal the claimants/respondent Nos.1 to 5/cross-objectors failed to lead any evidence qua the proof of income of the deceased as also qua the nature of work which the deceased was doing and, hence, the income of the deceased was assessed as per the minimum wages @ Rs.7500/- per month. In the absence of any evidence qua the nature of work which the deceased was doing and his income, I do not find any illegality or infirmity in the findings recorded by the Tribunal qua the income of the deceased. In view thereof, the cross-objections (XOBJC-203-CII-2017) stand dismissed.

Keeping in view the law laid down by Hon'ble the Supreme Court in the cases of **N. Jayasree & Ors. vs. Cholamandalam MS General Insurance Company Ltd. [2021(4) RCR (Civil) 642]; Magma General Insurance Company Ltd.** *(supra),* **Pranay Sethi's** case *(supra)* and **Sarla Verma's** case (*supra*), the compensation is reworked accordingly :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income of the deceased	7500/-
2	Annual income of the deceased	90000/-
3	Annual income after 1/4th deduction towards personal expenses	67500/- (90000-22500)
4	Multiplier 16	1080000/- (67500x16)
5	Future prospects @ 40%	432000/-
6	Total income of the deceased	1512000/- (1080000+432000)
7	Funeral expenses	16500/-
8	Loss of estate	16500/-
9	Loss of consortium Parental : Rs.88000/- (44000x2) Filial : Rs.88000/- (44000x2) Spousal : Rs.44000/-	220000/-
	Grand Total	17,65,000/-

In view of the above, the compensation is reduced from Rs.18,65,000/- to Rs.17,65,000/-. However, the component of interest as awarded shall remain the same. The appeal is, thus, partly allowed and the award passed by the Tribunal stands accordingly modified. The cross-objections filed by the respondent Nos.1 to 5/claimants are dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

26.05.2022
Yogesh Sharma

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