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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4988-2022 (O&M)
Date of decision :23.11.2022

ROYAL SUNDARAM GENERAL INSURANCE CO. LTD.
..... APPELLANT

VS

SAROJ SAINI AND ORS.
..... RESPONDENTS

CORAM: HON'BLE MR.JUSTICE ALOK JAIN

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

ALOK JAIN, J. (Oral)

The present appeal has been filed by the Insurance Company against the Award dated 17.08.2022 passed by the MACT, Gurugram.

Learned counsel for the appellant submits that there is material discrepancy in the evidence in as much as the brother of the deceased Kana Ram Saini, who is the author of the FIR has submitted that he brought him to the hospital, whereas, Medico Legal Report has recorded that one Shreekant, brought the deceased to the hospital and hence, the story cannot be relied upon. He further submits that as regards to the testimony of PW-4 Sanjay Dadhich, which has been heavily relied upon by the Tribunal also does not inspire confidence for the reason that the said statement under Section 161 Cr.P.C. was recorded by the police after almost three and a half months. The next contention raised by learned counsel for the appellant is with regard to the quantum to the extent that the MACT has relied upon the Income Tax

Return (P-16), which was not e-verified by CPC, Bangalore, and hence, could not be relied upon.

Counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court in the case titled as "***V. Subbulakshmi&Ors. Vs. S. Lakshmi & Anr., 2008 (1) RCR (Civil) 904*** and "***Chhattisgarh High Court, 2020 AAC 1687***" to allege collusion between the parties and has prayed for setting aside the award.

After hearing learned counsel for the appellant, I am of the considered view that there is no substance in the arguments raised by the counsel for the appellant. Admittedly, the accident took place on 22.09.2019, wherein the eye-witness submitted himself to cross-examination but the testimony could not be dispelled. The learned trial Court has rightly relied upon the fact that a report under Section 173 Cr.P.C. before the Criminal Court and in light of the fact, that a registration of criminal case against the offending vehicle for causing accident by rash and negligent driving is prima facie proof that the accident was a result of rash driving and negligence. The accident was duly proved and hence, the first contention raised by the appellant that no accident took place stands negated and reliance on the MLR that one Shreekant brought the deceased to the hospital cannot be disregarded in the light of the testimony of the eye-witness.

That other contention raised with regard to the proof of income of the deceased, whereby the argument raised is that the Income Tax Return is not e-verified deserves to be disregarded for the simple reason that the deceased could not sign the Income Tax Return for the year 2018-19, though he had duly earned his livelihood right up till his date of demise. The argument of the counsel for the appellant cannot be accepted and deserves to be negated for the reason that for awarding the compensation the calculation qua the income has to be taken not only from the past record but also on the fateful date too. In fact, this being a beneficial piece of legislation to support the effected parties, such a defence cannot be permitted to be raised by the Insurance Company. The Tribunal had looked into the Income Tax Return filed by the deceased for the assessment year 2018-19, (which was verified by the deceased) and the ITR for assessment year 2019-20 (which could not verified by the deceased) which demonstrate that the deceased was earning Rs.7,17,506/- per annum and the said ITR for AY- 2019-20 could not verified as the same was filed on 31st August 2019 for the income earned by the deceased for the period 01.04.2018 till 22.02.2019 and hence, there was no occasion for the same to have been done but the Income Tax Return had to be filed and there is no dispute raised by the Income Tax Department to the said return. It has been held by the Gujarat High Court in its order dated 06.05.2022 in the case titled ***Rajeshwariben Vs. Yunusbhai Isabbhai Sipai (2022 AAC 1257)*** as under**:**

> *"**17**. In respect of the first question, we are in agreement with Mr. Soni that in the decisions relied upon by him; the Courts have held that merely because the income tax returns have been filed after the death of the deceased would not ipso facto constitute a ground to ignore the same, particularly when the returns filed refer to the accounting period, when the deceased was alive and in business. Reference can be made to the decision rendered in the case of* ***National Insurance Company Ltd. v. Nishaben Pankajbhai, M/o Decd. Pankaj Shah*** *(supra). We are also guided by the decision rendered by the Hon'ble Apex Court*

> *in the case of Malarvizhi & Ors. (supra), in which the Hon'ble Court has held that the income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. In view of the same, we hold that the Tribunal was not justified in not considering the income tax returns for AY 2010-2011 and 2011-2012 merely because they have been filed subsequent to the death of the deceased, particularly when it covers the accounting period prior to the death."*

It would also be relevant to mention with regard to the judgment of Gujarat High Court in the case of ***National Insurance Co. Ltd. Vs Nishaben Pankajbhai, M/o Decd. Pankaj Shah in FA No. 397 of 2004 decided on 16.08.2012,*** wherein it was held:

> *"12. .... It is true that when the income tax return is filed after the accident, the same is required to be considered with more scrutiny and the reliability of such return may also be required to be tested. But at the same time, merely because return is filed at the later stage, such cannot be per se ground for discarding the evidence in toto. ...."*

The judgments relied upon by the counsel for the appellant are distinguishable on facts of the said case and does not deal with the issue that there is no objection to the Income Tax Return filed by the legal representatives of the deceased. Moreso, the income of the deceased has to be assessed on the date of his death and in the present case since the deceased was working on the fateful day. Merely, because the return had been filed later cannot be negated for the simple reason that Income Tax Return has to form the basis for calculating the quantum of compensation.

Accordingly, in light of the above, the present appeal is dismissed having found no illegality or infirmity in the 17.08.2022 passed by the MACT, Gurugram on the grounds raised by the appellant herein.

Dismissed.

(ALOK JAIN)
JUDGE

23.11.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No