IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3600/2019(O&M)
Date of decision:23/01/2023

M/s Magma HDI General Insurance Co. Ltd.

……………..Appellant

Vs.

Kitab Singh @ Kitaba and another

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumit Gupta, Advocate for the appellant-Ins.Co.

Mr. Ashok Goel, Advocate for the respondent/claimant.

Mr.Abhishek Jindal, Advocate for
Mr.Abhimanyu Batra, Advocate for respondent no.2-Driver

Nidhi Gupta, J.

This common order shall dispose of two cross appeals bearing FAO No.381/2021 filed by the claimant, and FAO No.3600/2019 filed by Insurance Company, both Appeals arising out of the Award dated 19.4.2019 passed by the Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') passed in Claim petition No. RBT 34 MACP of 2017 u/s 166 of the Motor Vehicles Act.

Facts are being noticed and referred-to from FAO 3600/2019, facts and issues in both Appeals/ cross-appeals being otherwise common.

Brief facts of the case are that learned Tribunal on appraisal of all the material placed before it came to the conclusion that the death of deceased Parveen Kumar @ Parveen was caused due to the injuries suffered by him in the motor vehicular accident that took place on 11.2.2017 due to rash and negligent driving of Sunil/respondent no.2 herein/driver of Car bearing registration No. HR-51-A-6807 (hereinafter referred to as 'the offending vehicle'). Accordingly, learned Tribunal on basis of the facts of the case awarded compensation of Rs.13,90,800/- along with interest @ 7.5% per annum. Sole claimant is father of the deceased. Deceased was a bachelor at the time of his death. Respondents were held jointly and severally liable to pay the compensation.

It is submitted by the learned counsel for the appellant-Insurance Company that the Tribunal is in patent error in awarding such exorbitant amount of compensation as the claimant was never dependent upon the deceased. It is submitted that a perusal of the claim petition Annexure A-1 (colly.) shows that it has nowhere been pleaded therein by the claimant that he was dependent on the deceased. It is submitted that even in the evidence led by the respondent, neither in examination-in-chief nor in cross examination, has the claimant stated at any stage that he was dependent upon the deceased. Learned counsel refers to the cross-examination dated 9.10.2018 of the claimant wherein the claimant has stated that "*my wife is not alive. I have another son named as Anil Kumar who is elder to deceased Parveen Kumar. I have no daughter*". Learned counsel submits that admittedly claimant has another son, who is older, and therefore, it stands established that the claimant was not dependent upon the deceased and therefore, claimant was not entitled to compensation. It is reiterated that it has nowhere been clearly stated by the claimant that he was dependent upon the earnings of the deceased, therefore, the compensation awarded by the Tribunal is contrary to the law laid down by the Hon'ble Supreme Court in **Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104,** especially para 15 thereof, where in it has been held that the father of the deceased is likely to have his own income and should not be considered as a dependent upon his son. It is submitted that therefore, the impugned Award should be set aside.

In response, it is submitted by the learned counsel for the claimant that the only ground on which the appellant-Insurance Company is assailing the Award is that the claimant has nowhere pleaded that he was dependent on the deceased and therefore, claimant was not entitled to compensation. It is submitted that this assertion of ld. Counsel for the appellant is factually incorrect as the claimant in his affidavit before the Tribunal has categorically stated in para 2 that he was dependent upon the deceased. It is further submitted that the Motor Vehicles Act is a social welfare legislation and the claimant has to be considered to be dependent upon the deceased being the aged father of the deceased. Learned counsel for the respondent relies upon subsequent judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130** and the judgment of Delhi High Court in **Indrawati & Anr. Versus Ranbir Singh & Ors., Law Finder Doc Id # 1797072** wherein parents of the deceased have been considered to be dependents of the deceased.

Learned counsel for the claimant further submits that by way of appeal bearing FAO 381/2021 he is seeking enhancement of the compensation inter alia on the ground that the learned Tribunal has made a deduction of 50% income of the deceased on the ground of personal expenses. It is submitted that the deduction so made is high and a deduction of 1/3rd ought to have been made. Learned counsel also submits that the Tribunal has taken income of the deceased on lower side as only Rs. 9000/- pm, whereas the deceased was earning Rs.12,000/- per month by doing painting job. It is submitted that even no consortium has been granted to the claimant father.

No other argument has been raised on behalf of the parties.

In the present case perusal of the affidavit filed by the claimant by way of examination-in-chief, referred to above, shows that the claimant has stated in para 2 that "*deceased was earning Rs.12,000/- per month and used to maintain and support the family of the petitioner with relevant social obligation*". In my view, said averment of the claimant is sufficient assertion of dependency on the deceased as it has been clearly stated therein that the income of the deceased was used to support and maintain the family of the claimant. Moreover, admittedly, no question was put to the claimant in this regard by the appellant-Insurance Company during cross-examination, and therefore, the assertion of the claimant remains unrebutted.

Further, the law laid down by the Hon'ble Supreme Court in the case of **Magma (supra)**, is very clear wherein it has been held that the aged father of the deceased is to be taken as dependent. Hon'ble Supreme Court has very clearly held in para 8.4 of **Magma (supra)** as follows:

> "8.4. The Insurance Company has submitted that the father and the sister of the deceased could not be treated as dependents, and it is only a mother who can be dependent of her son. This contention deserves to be repelled. The deceased was a bachelor, whose mother had pre-deceased him. The deceased's father was about 65 years old, and an unmarried sister. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents."

Accordingly, I find no merit in the submissions made on behalf of the Insurance Company that the claimant cannot be held to be a dependent on the diseased. Hence, the Appeal filed by Insurance Company, bearing FAO No.3600/2019, is dismissed.

As regards the claimant's appeal for enhancement of compensation, bearing FAO 381/2021 it is well established legal position that in the case of death of a bachelor a deduction of 50% has to be made on account of personal expenses. No reason has been given by the claimant as to why a deduction of 1/3rd should be made also in view of the fact that the father is the sole claimant. Accordingly, I find no error in the impugned Award in this aspect.

Regarding the assertion of the learned counsel that the income of the deceased has been taken on lower side, no evidence has been placed on record by the claimant in support of his contention that the deceased was earning Rs. 12,000/- pm. The findings of the Tribunal in this regard are contained in para 16 of the impugned Award, as under: -

> *"16. Considering the oral as well as documentary evidence on record, it has been proved that Parveen died in the accident in question. As stated in the petition, Parveen was 19 years 8 months old at the time of his death and in his post-mortem report, his age has been mentioned as 20 years. In addition to this, Senior Secondary Examination Certificate and Middle Examination Certificate of deceased Parveen Kumar have also been placed on file as Ex.P6 and Ex.P7 respectively which also find his date of birth as 09.07.2017. So, the age of deceased is taken as 20 years as mentioned in the post mortem report supported by his educational certificates. Though there is a plea of the petitioner that deceased was earning 12,000/- per month by doing the job of painter but there is no evidence on file to prove his earnings. There is no oral or documentary evidence to support the pleadings regarding the earnings of the deceased. So, in the absence of any evidence to this effect, income of deceased Parveen would be assessed as that of a daily wager. The accident took place on 11.02.2017. Thus, as per the minimum*

rate of wages notified by the State for a daily wager during the year 2016-17, income of the deceased is assessed is ₹9,000/- per month".

Learned counsel for the claimant is unable to controvert the aforesaid findings of the ld. Tribunal. Even now, nothing has been brought on record to show that the deceased was earning Rs. 12,000/- pm. Just a bald assertion is not sufficient.

Thus, for the reasons stated above, I find no ground to interfere in the impugned Award. Both Appeals accordingly, stand dismissed.

23/01/2023 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned	**Yes**
Whether reportable	**Yes/No**