IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1902-2016(O&M) with
XOBJC-178-CII-2016(O&M)
Reserved on:-1.5.2023
Date of Pronouncement:-8.5.2023

New India Assurance Company Ltd.

...Appellant

Versus

Smt.Usha Rani and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vinod Gupta, Advocate
for the appellant.

Mr.Vinod K. Kanwal, Advocate
for respondents No.1 to 5/Cross-objectors.

Ms.Saloni Sharma, Advocate
for respondents No.6 and 7.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that due to death of one Ram Kumar in a motor vehicular accident, his widow – Smt.Usha Rani, aged about 55 years, daughter Ms.Anu, aged about 23 years, son – Gaurav aged about 21 years, mother – Smt.Susheela Devi, aged about 75 years and father – Rama Kant, aged about 80 years, all residents of Kurukshetra had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Gurmail Singh – driver, Kandhari Beverages Pvt. Ltd., Chandigarh through its

Director Asish Kumar Sethi – owner and the New India Assurance Company Ltd., Kurukshetra – insurer of the truck bearing registration No.HP-12C-0263 (hereinafter referred to as the offending truck), claiming compensation. In that claim petition, the claimants/petitioners had impleaded Smt.Komal, a married daughter of Ram Kumar as respondent No.4.

2. After contest, the claim petition was allowed by Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as the Tribunal) vide award dated 18.9.2015 and compensation of Rs.49,49,171/- with interest at the rate of 9% per annum was awarded to the claimants from the date of filing of the claim petition till the date of realisation, payable by respondents No.1 to 3 jointly and severally.

3. Finding the compensation awarded to be on higher side, the respondent No.3 – insurance company has filed the present appeal before this Court, notice of which was given to the respondents.

4. Respondents No.1 to 5, who happened to the claimants before the Tribunal have put in appearance through counsel and filed cross-objections seeking enhancement of compensation. Respondents No.6 and 7 have also appeared through counsel.

5. I have heard learned counsel for the parties besides going through the record.

6. Basically the dispute between the parties is with regard to the quantum of compensation. According to the appellant – insurance company the compensation awarded is on very high side, whereas this fact is disputed by respondents/claimants, who submit that the

compensation awarded is on lower side and it should be enhanced.

7. After hearing the rival contentions, I find that the Tribunal had taken the age of deceased to be 57 years, his date of birth being 12.12.1957. His occupation was taken as Sanskrit Teacher in Govt. High School village Surukhpur, District Kurukshetra, getting salary of Rs.66,902/- per month as per the salary certificate Ex.P1. After deduction of income tax of Rs.88,132/- out of the annual salary of deceased, the remainder came out to Rs.7,14,692/- (66902 x 12 – 88132).

8. However, the Tribunal omitted making any addition towards future prospects. In terms of the judgment ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009***, when the deceased was between aged group of 50-60 years, addition of 15% is to be made on the established income towards future prospects. Doing that the annual income of the deceased comes out to Rs.8,21,895/- (714692+107203).

9. Keeping in view the number of dependent family members of the deceased, deduction to the extent of 1/4th is to be made from the income of the deceased as personal and living expenses. Doing that, the annual dependency of the claimants comes out to Rs.6,16,422/- (821895 – 205473).

10. The Tribunal has correctly used multiplier of 9 keeping in view the judgment ***Smt.Sarla Verma and others Versus Delhi Trans;port Corporation and another, 2009(3) RCR(Civil)77***. Doing that the compensation payable comes out to Rs. 6,16,422 x 9 = 55,47,798/-.

11. Under the conventional heads, the Tribunal has awarded Rs.1

lakh under head loss of consortium and Rs.25,000/- were awarded to the claimants under the head transportation and funeral expenses.

12. However, as per the latest judgment ***Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]***, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

Doing that the compensation comes out to be Rs.56,17,798/- (55,47,798 + 40,000 + 15,000 + 15,000).

13. Thus the total amount of compensation comes to Rs. 56,17,798/-.

14. After death of the deceased, the claimants have received an amount equivalent to 10 months salary under ex gratia scheme of Haryana Government, which is required to be deducted from the compensation payable to the claimants. PW2 Smt.Sheela Rani, Clerk, Govt. High School, village Surukhpur, Kurukshetra has deposed in that regarding stating that widow of deceased is entitled to full salary except HRA and increment till age of retirement of her husband.

15. Thus the total compensation payable is worked out to Rs.49,48,778/- [5617798 – 669020{66902 x 10}].

16. The Tribunal has awarded an amount of Rs.49,49,171/-. Therefore, the appeal filed by the Insurance company is allowed partly and compensation awarded to claimant is reduced from Rs. 49,49,171/- to Rs.49,48,778/-. The interest granted was also on the higher side. The

claimants are entitled to the awarded amount of Rs.49,48,778/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realisation, payable by respondents No.1 to 3 jointly and severally. The share of the claimants shall be reduced proportionately. Amount if paid in excess be refunded by the claimants to the appellant – insurance company within one month from today otherwise the Appellant insurance company shall have a right to recover the excess amount paid by filing an execution application before the Executing Tribunal. In that way, the appeal is allowed partly with costs.

17. In view of the above discussion, cross-objections filed on behalf of the claimants being devoid of merit stand dismissed with costs.

Since the appeal filed on behalf of the insurance company is allowed partly and cross-objections filed on behalf of the claimants stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

8.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No