IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

229 **FAO No.6585-2016 (O&M)**
Date of decision: 24.01.2023

Shriram General Insurance Company Limited **...Appellant(s)**

Vs.

Bholu Khan & Others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Punit Jain, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for respondents No.3 to 8.

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NIDHI GUPTA, J.

Present appeal has been filed by the Insurance Company seeking setting aside of Award dated 16.08.2016 passed by Motor Accident Claims Tribunal, Mewat (hereinafter referred to as "the learned Tribunal") whereby claim petition filed by respondents No.3 to 8 herein was allowed and compensation of Rs.34,54,400/- was awarded to the said respondents.

Brief facts of the case are that the learned Tribunal upon appraisal of all the materials placed before it came to the conclusion that deceased-Yusuf had died due to motor vehicular accident that took place on 12.01.2016 because of the rash and negligent driving of Dumper bearing registration No.HR-74A-6850 (hereinafter referred to as "the offending vehicle") being driven by respondent No.2 herein, and owned by respondent No.1, and insured by the appellant. Respondents

No.3 to 8/claimants before the learned Tribunal are the widow, three minor children and parents of the deceased.

At the very outset it is submitted by learned counsel for the appellant/Insurance Company that the Award is being impugned only on ground of quantum of compensation. It is submitted that the learned Tribunal is in error in taking income of the deceased as Rs.13,200/-per month on the basis of Exhibit PW4/M. It is submitted that as per salary slips Exhibit PW4/B to N presented in evidence by the claimants, it is seen that the deceased was drawing different amounts as salary every month and accordingly, as per judgment of the Hon'ble Supreme Court in ***Civil Appeal No.7181 of 2015 titled as "ICICI Lombard General Insurance Co. Ltd. Vs. Ajay Kumar Mohanty"*** the learned Tribunal ought to have taken average salary drawn in all the months and not the last drawn income of the deceased. It is stated that accordingly, salary of the deceased ought to have been taken as Rs.10,000/- per month.

It is further submitted that it has come on record that the deceased was drawing overtime and while calculating future prospects, overtime cannot be included. It is submitted that therefore, future prospects @ 40% on Rs.10,000/- ought to have been given.

It is further submitted that under the conventional heads, the learned Tribunal has granted Rs.4,25,000/- whereas in view of the fact that there were six claimants, Rs.2,97,000/- should have been granted.

Last submission on behalf of appellant is that the learned Tribunal has granted penal interest @ 9% which as per law laid down by the Hon'ble Supreme Court is not applicable and therefore, interest @ 7.5% simpliciter should be granted.

In response, it is submitted by learned counsel for the claimants/respondents No.3 to 8 that as per judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5830 of 2007 titled as "National Insurance Company Limited Vs. Indira Srivastava & Others"*** last drawn salary of the deceased has to be taken into consideration.

It is admitted that the deceased was in a private job and therefore, future prospects @ 40% ought to be given; and further stated that deduction of 1/4th by way of personal expenses has been rightly made. It is also submitted that the deceased was a very poor person and claimants are very poor people.

I have heard learned counsel for the parties. I find merit in the submissions advanced on behalf of the appellant.

A perusal of the record of the case reveals that the Average income of the deceased in the last 12 months will be as follows:-

Sr. No.	**Month**	**Salary**
1.	January, 2015	Rs.8,933/-
2.	February, 2015	Rs.9,582/-
3.	March, 2015	Rs.7,392/-
4.	April, 2015	Rs.6,890/-
5.	May, 2015	Rs.8,228/-
6.	June, 2015	Rs.10,590/-
7.	July, 2015	Rs.8,069/-
8.	August, 2015	Rs.11,606/-
9.	September, 2015	Rs.9,886/-
10.	October, 2015	Rs.9,797/-
11.	November, 2015	Rs.9,366/-
12.	December, 2015	Rs.12,961/-
	Total	Rs.1,13,300/-
	Average	**1,13,300/-/ 12 = Rs.9,441.66/-**
	Round off	Rs.9,500/- per month

Further, as per 3-Judge Bench judgment of the Hon'ble Supreme Court relied upon by learned counsel for the appellant in case of ***Ajay Kumar Mohanty (supra)***, it is very clearly laid down therein in Para 7 that;

> *"7. On perusing the order of the Tribunal, we find merit in the contention of the insurer that while calculating the income in paragraph 10 of its order, the Tribunal has committed an error of computation. The Tribunal has on the basis of the income tax returns for 2007, 2008 and 2009 arrived at an average income of Rs.1,45,231/-. However, the Tribunal has thereafter noted that the average income comes to Rs.2,62,372/-. Ultimately, the Tribunal proceeds on the annual income of Rs.2,22,000/- on the basis of the testimony of the claimant that he was earning Rs.18,500/- per month. This is contradictory. In our view, on the basis of the finding of the Tribunal that the average income of the claimant for the previous three years was Rs.1,45,231/-, it would be necessary to take into account the evidence of PW2 that the disability is to the extent of 55 per cent. In other words, the loss of earning as a result of the aforesaid disability would work out to Rs.79,877/- per year."*

Accordingly, income of the deceased be taken as Rs.10,000/- per month. It has further come on record that the claimants are also receiving Rs.180/- per day by way of ESI benefit.

The deceased was admittedly 26 years old at the time of death, therefore, future prospects @ 40% are added to the annual income. Deduction of $1/4^{th}$ is maintained and multiplier of 17 is applicable. Perusal of the Award shows that the learned Tribunal has awarded Rs.1 lakh for loss of estate; Rs.1 lakh for loss of expectation of life of deceased; Rs.1 lakh for loss of consortium and Rs.1 lakh for love and affection. Over and above, Rs.25,000/- has been granted towards funeral expenses. As per law laid down by the Hon'ble Supreme Court in ***Civil Appeal No.3483 of 2008 titled as "Sarla Verma & Others Vs. Delhi Transport Corporation & Another"; Special Leave Petition (Civil) No.25590 of 2014 titled as "National Insurance Company Limited Vs. Pranay Sethi & Others" and Civil Appeal No.9581 of 2018 titled as "Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhru Ram & Others",*** said amounts are on the higher side. Accordingly, under conventional heads total amount of Rs.2,97,000/- is awarded.

In view of the above discussion, present appeal is allowed and compensation admissible to the claimants/respondents No.3 to 8 is re-worked as follows:-

Sr. No.	**Heads**	**Amount**
1.	Monthly income as per average income of last 12 months (January 2015 to December 2015)	Rs.9,500/-
2.	Future prospects (40%)	Rs.9,500/- + Rs.3,800/- = Rs.13,300/-
3.	Deduction of personal expenses (1/4) (6 claimants)	Rs.13,300/- x 3/4 = Rs.9,975/-
4.	Multiplier	17
5.	Annual dependency	Rs.9,975/- x 12 x 17 = Rs.20,34,900/-
6.	Loss of estate	Rs.16,500/-
7.	Funeral expenses	Rs.16,500/-
8.	Spousal consortium	Rs.44,000/-
9.	Filial and parental to 5 claimants	Rs.2,20,000/-
	Total	**Rs.23,31,900/-**
	Awarded by learned Tribunal	Rs.34,54,400/-
	Difference	Rs.11,22,500/-

Rate of interest to be payable is 7.5% per annum from the date of filing the petition till realization. Ratio of apportionment and manner of disbursement as determined by the learned Tribunal will remain the same.

Accordingly, present appeal stands disposed of as above.

Pending application(s) if any also stand(s) disposed of.

24.01.2023 **(Nidhi Gupta)**
Sunena **Judge**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No