**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No. 2716 of 2017 (O&M)
DATE OF DECISION :- January 25, 2023**

United India Insurance Company Limited ...Appellant

Versus

Smt. Roshni Devi and others ...Respondents

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

Present:- Mr. D.P. Gupta, Advocate for the appellant.

Mr. Sagar Aggarwal, Advocate for respondents No. 1 to 4.

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Briefly stated the facts of the case are that one Desh Raj had suffered injuries in a motor vehicular accident, which took place on 29.11.2013 at about 1.00 P.M, in the area of Grain Market, Karnal within jurisdiction of Police Station City Karnal, statedly on account of rash and negligent driving of Car bearing Registration No. PB-10-CR-8040 by respondent No. 1 Devender. Sh. Desh Raj having succumbed to those injuries on 27.12.2013.

Legal representatives of Sh. Desh Raj, namely his wife Smt. Roshni Devi, aged about 37 years, Ms. Manjeet Kaur, aged about 20 years, daughter, Navinder, aged about 18 years, son and Davinder, aged about 14 years minor son, all residents of VPO Kutail, Tehsil and District Karnal had brought a claim petition against respondents i.e. Devender, driver, Prince Mohan, owner and United India Insurance Company Limited, Karnal, insurer of Car bearing Registration No. PB-10-CR-8040 (hereinafter referred to as the offending Car).

On getting notice, all the three respondents appeared and offered a contest. Vide Award dated 30.9.2016, the Motor Accident Claims Tribunal, Karnal accepted the application and awarded compensation of Rs.30,99,302/- along with interest at the rate of 9% per annum from the date of filing of claim petition till actual realization.

The respondent Insurance Company felt aggrieved by the quantum of compensation has approached this Court by way of filing the appeal, notice of which was given to the respondents claimants, who have put in appearance through counsel.

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

The Motor Accident Claims Tribunal, Karnal, on analysis of the evidence brought on file by the parties had come to the conclusion that the accident in question in which Sh. Desh Raj had suffered injuries to which he had succumbed later on had taken place on account of rash and negligent driving of offending Car by respondent No. 1 Devender. The legal representatives of such deceased have filed claim petition against driver, owner and Insurance Company of the said Car which had been accepted.

The limited question is to be seen is as to whether the compensation awarded by the Tribunal is proper and reasonable or that it is on higher side. The Tribunal relying upon the evidence available on the record had taken the age of the deceased to be 45 years, his avocation as an agriculturist owning 20 acres of agricultural land and assessed his monthly income at Rs.12,000/-.

The objection put forward by learned counsel for the appellant Insurance Company is that such monthly income taken is on higher side and rather the income of deceased should have been assessed, keeping in view the minimum wages payable to the workers in Haryana State at relevant time.

Whereas learned counsel appearing for the respondents claimants states that the Tribunal was justified in taking monthly income of deceased as Rs.12,000/- because the claimants have successfully proved that he was an agriculturist holding land of 20 acres, therefore, there was no reason to consider the minimum wages payable to the workers in the State of Haryana at relevant time.

After hearing the rival contentions, I find that considering the fact that the deceased was an agriculturist, owning 20 acres of agricultural land, his monthly income being taken at Rs.12,000/- per month by the Tribunal cannot be faulted with. Even if the land belong to the deceased is still there, now inherited by his legal heirs but then the efforts put in by the deceased in cultivating that land and managing its affairs is to be taken into consideration. Therefore, I do not find any reason to take the income of deceased on lower side.

Coming to the next argument advanced by learned counsel for the appellant that the Tribunal has wrongly made addition of 30% towards future prospects, when in terms of judgment ***'National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009'*** considering the age of deceased it should have been 25%. This preposition of law is not disputed by learned counsel for the respondents claimants.

In that way the monthly income of deceased comes out to Rs.15,000/- per month. The Tribunal has fallen in error in making deduction of 10% on account of income tax when admittedly no income tax is payable by the person on his agricultural income. So deduction is not to be made from income of deceased. Considering the number of dependents family members

1/4th of this amount is to be deducted towards personal and living expenses of the deceased. Doing that the monthly dependency of the claimants comes out to Rs.11,250/-. The annual dependency comes out to Rs.11,250 x 12 = Rs.1,35,000/-. The Tribunal has properly applied multiplier of 14. The claimants are entitled to get Rs.15,000/- towards funeral expenses. Rs.15,000/- more on account of loss of Estate and Rs.40,000/- each under the Head loss of consortium. Doing that the amount comes out to Rs.20,80,000/-. The claimants are entitled to get the amount spent on medical treatment of the deceased Desh Raj during period of his hospitalization. That amount of Rs.8,05,262/- is to be added towards compensation payable. The total amount comes out to Rs.28,85,262/-. In that way, the compensation to which the claimants are entitled gets reduced by Rs.2,14,040/- (28,85,262 – 30,99,302). Now the claimants shall be entitled to get compensation of Rs.28,85,262 with interest at the rate of 9% from the date of filing of claim petition till actual realization. The manner of payment and apportionment between the claimants shall remain the same as directed in the impugned Award. However, if claimant No. 4 Davinder has attained majority by now, on furnishing documentary evidence in that regard his share be released to him directly instead of depositing that with some nationalized Bank in the form of FDR.

With such modification, the appeal is allowed partly with proportionate cost.

(H.S. MADAAN)
JUDGE

January 25, 2023
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No