2023:PHHC:065688

[220] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

[1] FAO-3250-2017
Date of Decision :05.05.2023

SBI General Insurance Company …Appellant

versus

Anju and others ….Respondents

[2] FAO-6657-2017

Anju …Appellant

versus

Ishrak Khan and others ….Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajneesh Malhotra, Advocate for the appellant/Insurance Company in FAO-3250-2017 and for respondent No.3 in FAO-6657-2017.

Mr. Pankaj Bali, Advocatefor respondent No.1 in FAO No.3250-2017 and for the appellant in FAO-6657-2017.

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B.S. Walia, J. (Oral)

[1] This order shall decide FAO-3250-2017 filed by the Insurance Company, praying for reduction of compensation of Rs.22,69,000/- awarded to the respondents-claimants besides,FAO-6657-2017 filed by the claimant, seeking enhancement of compensation.

[2] Learned counsel for the appellant insurance company contends that the deceased was 24 years of age at the time of his death on 11.03.2015 and although income of the deceased as agriculturist was claimed as Rs.50,000/- and no evidence in respect thereto was led, the Tribunal without taking into account minimum wages for an unskilled

worker i.e. Rs.5812/- per month took into account income of the deceased as Rs.10,000/- per month. Secondly, although the claimants were entitled to 40% of the income of the deceased to be taken into account in terms of paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited****versus****Pranay Sethi and others***', *2017(4) RCR (Civil) 1009*for the purpose of award of future prospects in view of the deceased being self employed, the learned Tribunal took into account 50% of the income of the deceased towards future prospects.Learned counsel further contends that as against the entitlement of each claimant to receive Rs.40,000/- only on account of loss of consortium in terms of the decision of Hon'ble the Supreme Court in '***Pranay Sethi's*** case (*supra*), '***Satinder Kaur @ Satwinder Kaur and Others****vs.****United India Insurance Co. Ltd****. law Finder Doc Id # 1729112* as followed by ***'Magma General Insurance Company Limited****versus****Nanu Ram alias Chuhru Ram and others', 2018(4) RCR (Civil)333***, the learned Tribunal awarded Rs.1,00,000/- on account of loss of spousal consortium and Rs.2,00,000/- on account of loss of love and affection whereas, as per the decision in '***Satinder Kaur @ Satwinder Kaur and other's***, case (supra), no amount is payable on account of loss of love and affection. Learned Counsel lastly contended that the deceased was also responsible to some extent for the accident on account of driving the vehicle too close to the offending vehicle.

[3] *Per contra*, learned counsel for the respondents-claimants contends that the deceased was working on his 5 ½ acres of agricultural land, besides, was maintaining cows / buffaloes and supplying milk and although no documentary evidence in respect thereto was on the record, yet it is common knowledge that in farms, cows / buffaloes are reared not

only for meeting the domestic requirement but also for sellingsurplus milk and earning money. Learned counsel contends that in view of the decision of Hon'ble the Supreme Court in '***Hem Raj****versus****Oriental Insurance Company Limited and others***, *SLP (C) No.22134 of 2016, decided on 22.11.2017*, some guess work has to be adopted, even though, documentary evidence in respect thereto may not be available on the record.However, as regards the plea of the Insurance Company that the deceased was also responsible to some extent for the accident on account of not maintaining safe distance behind the offending vehicle, learned counsel vehemently controvertsthe same and contends that the offending vehicle's driver suddenly applied brakes on the highway, as a result of which the deceased's car banged into the canter, resulting in his death, therefore, the negligence was exclusively that of the driver of the offending vehicle. He however frankly concedes that in view of paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in '***Pranay Sethi's*** case (supra), it is 40% of the income of the deceased which is to be taken into account for the purpose of award of future prospects and not 50%, besides as against Rs.1,00,000/- awarded on account of loss of spousal consortium and Rs.2,00,000/- on account of loss of love and affection, the claimants are entitled to Rs.40,000/-each on account of loss of spousal and filial consortium, in view of the decision of Hon'ble the Supreme Court in '***Pranay Sethi's*** case (*supra*) followed by '***Satinder Kaur @ Satwinder Kaur and Others****vs.****United India Insurance Co. Ltd***. *law Finder Doc Id # 1729112*and***'Magma General Insurance Company Limited*** (supra) and that no amount is payable on account of loss of love and affection in view of the decision of Hon'ble the Supreme Court in '***Satinder Kaur @ Satwinder Kaur and others***' (surpa).

[4] I have considered the submissions of learned counsel and with their able assistance perused the record. Admittedly, the deceased was an agriculturist and cultivating 5 ½acres of land,besides, had cows / buffaloes. No doubt, there is no documentary proof of the deceased running a milk dairy in addition to working on 5 ½ acres of land owned by him, but by taking into account the normal trend in rural areas to rear cows / buffaloes for meeting domestic requirement as well as for earning income by selling the surplus milk and by taking into account that minimum of 2 to 3 cows / buffaloes would have been reared by the deceased from which he would be earning money by sale of milk and for which he was putting in labour by taking care of the cows / buffaloes,looking after them, milking them and delivering milk, apart from working on his 5 ½ acres of agricultural land,I find that there is no infirmity with the assessment of income of the deceased @ Rs.10,000/- per month even though, the monthly wages of an unskilled worker as per the Minimum Wages Act for the relevant period were Rs.5812/- per month, for in such like cases, it would be very difficulty to have documentary proof.

[5] However, I find merit in the plea of learned counsel for the appellant insurance company of the deceased also having been negligent leading to the accident and his consequential death on account of not maintaining adequate distance from the vehicle going ahead. No doubt, the driver of the offending vehicle applied brakes suddenly and one going on a highway would not expect the driver of a vehicle ahead to apply brakes suddenly but at the same time, a duty is cast on the vehicle following another vehicle to maintain a proper distance, therefore, it can reasonably be presumed that the accident also resulted due to the deceased

not maintaining a safe distance from the vehicle ahead i.e.the offending vehicle. However, it is very difficult to apportion the exact negligence of the driver of each of the vehicles involved but by taking into account the fact that a vehicle going on the highway is not expected to suddenly apply brakes, as also plea of the learned counsel for the insurance company that the deceased was also negligent to some extent, negligence of the driver of the offending vehicle is assessed at 75% while that of the deceased is assessed at 25%.

[6] Accordingly, in view of the position noted above,details of compensation as awarded by the learned Tribunal and asassessed by this Court is as under:-

Sr. No.	Head	Amount assessed by Tribunal in Rupees	Amount assessed by this Court in Rupees
1.	Income assessed	10,000/-	10,000/-
2.	Future prospects	50% of 10,000/- = 5,000/-.	40% of 10,000/- = 4,000/-
3.	Total income assessed	10,000/- + 5,000/- = 15,000/-	10,000/- + 4,000/- =14,000/-
4.	Deduction	1/3rd 1/3rd of 15,000/- =5,000/- 15,000/- -5,000/- =10,000/-	1/3rd 1/3rd of 14,000/- = 4,667/- 14,000/- -4,667/- = 9,333/-
5.	Multiplier	18	18
6.	Compensation awarded	10,000/- x 12=12,00,00/- (Less income tax @ 10%) 10% i.e. 12,000/- = 12,00,00/- -12,000/- =1,08,000/-. 1,08,000/- x 18 = 19,44,000/-	9,333/- x 12x 18 =20,15,928/- (Learned counsel for the appellant concedes that in view of the income of the deceased being less than the taxable limits, no income tax would be deducted).
7.	Loss of Love and Affection	2,00,000/-	NIL
8.	Loss of Consortium	1,00,000/-	40,000/- to the widow

			& 40,000/- to the father
9.	Funeral Expenses	25,000/-	15,000/-
10.	Loss of Estate	NIL	15,000/-
11.	Interest	9%	9%
	Total	22,69,000/-	21,25,928/- less 25 % i.e. 5,31,482/- = 15,94,446/-

[7] Accordingly, in view of the position noted above, as against compensation of Rs.22,69,000/- awarded by learned Tribunal along with interest @ 9% per annum, the claimants are held entitled to award of compensation of Rs. 15,94,446/- along with interest @ 9% per annum with effect from the date of claim petition till date of payment, less payment if any, already made.

[8] Accordingly, in the light of the position noted above, FAO-3250-2017 filed by the Insurance Company is partially allowed as above, while that of the claimants i.e. FAO-6657-2017, is dismissed in terms of the decision as above.

(B.S. Walia)
Judge

05.05.2023
'Rajneesh'

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