IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 3589/2017
Date of decision:21/03/2023

United India Insurance Company Limited

…………Appellant

Vs.

Seeta Devi and others

………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Vikas Mohan Gupta,Advocate for the appellant Insurance Co.

Mr.Naveen Sharma,Advocate for claimants/ Respondents 1 to 4.

Service upon respondent no.5 (driver and owner of the Offending vehicle) dispensed with vide order dt. 26.2.2018.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company against the Award dated 7.2.2017 passed by Motor Accident Claims Tribunal, Jalandhar, (hereinafter referred to as 'the Tribunal') in claim petition No. MACT 64/2016 filed under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') whereby compensation of Rs.32,67,000/- has been awarded to the claimants/respondents 1 to 4 herein.

Brief facts of the case are that the ld. Tribunal on appraisal of pleadings and evidence led by the parties concluded that the deceased Davinder Pal had died due to injuries suffered by him in a motor vehicular accident that took place on 30.4.2015 due to rash and negligent driving of

Car bearing registration No. PB-10-BT-0505 (hereinafter referred to as 'the offending vehicle') being driven and owned by respondent no.5 herein and insured by the appellant herein.

Ld. Counsel for the appellant Insurance Company assails the impugned Award on the grounds: -

(i) that age of the deceased has been taken as 48 years whereas, in the Passport of the deceased, his date of birth is mentioned therein as 1.2.1964, as per which age of the deceased ought to have been taken as 51 years at time of death. It is submitted that there is no basis for the ld. Tribunal to take the age of the deceased as 48 years at the time of accident. It is submitted that accordingly, ld. Tribunal is in error in applying multiplier of 13 whereas multiplier of 12 was applicable. It is submitted that for this reason ld. Tribunal has also incorrectly added future prospects @ 30% whereas future prospects @ 10% ought to have been added;

(ii) that income of the deceased has been taken as Rs.20,000/- per month which is on higher side. It is submitted that the deceased was stated to be working in Dubai, however, no evidence has been led by the claimants to prove his alleged employment. It is submitted that thus, the ld. Tribunal has incorrectly assessed the notional income of the deceased as Rs.20,000/- per month, which has been done purely on the basis of guesswork. It is submitted that even salary certificate of the deceased was not placed on record by the claimants and therefore, income of the deceased ought to have been taken as Rs.11,500/- per month as per Notification dated 5.4.2017 as per which minimum wages payable to a highly skilled worker is Rs.11,200/- per month which may be rounded off to Rs. 11,500/- per month; and

(iii) that there are 4 claimants - the widow of the deceased-Davinder Pal and his 3 major children. It is submitted that major children cannot be taken as dependents of the deceased and therefore, a deduction of 50% ought to have been made towards personal expenses.

In response, ld. Counsel for the claimants/ respondents submits that perusal of Passport of the deceased shows that deceased was working as a "Reinforcing Fitter" with "Al Ashram Contracting LLC". It is submitted that accordingly, there was no error on part of the ld. Tribunal in taking the income of the deceased as Rs.20,000/- per month. It is further submitted that daughter of the deceased is unmarried and was therefore, dependent on the deceased, thereby, at best a deduction of 1/3rd can be made towards personal expenses.

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

Heard ld. Counsel.

Perusal of the impugned Award shows that ld. Tribunal has incorrectly recorded that Ex.P5 is the Passport of the deceased, whereas Ex.P5, available at page 29 of the LCR, is the Post Mortem Report of the deceased. In fact, Passport of the deceased is Ex.C1 available at page 203 of the LCR, which clearly shows date of birth of the deceased to be 1.2.1964. Accordingly, ld. Tribunal is in patent error in taking the age of the deceased to be 48 years at the time of accident i.e. on 30.4.2015. From the above it is clear that deceased was 51 years of age at the time of his death. Accordingly, as per law laid down by the Hon'ble Supreme Court in **Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018 (18) SCC 130; Sarla Verma vs. Delhi Transport Corporation (2009) AIR (SC) 3104;** and **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, multiplier of 12 has to be applied; and future prospects @ 10% have to be added.

As regards income of the deceased, perusal of Ex.C1 - which is Passport of the deceased along with Immigration stamps thereupon, available at pages 203 to 211 of the LCR, shows that profession of the deceased has been mentioned therein to be of a "Reinforcing Fitter". It is further recorded in the Passport that the deceased was sponsored by Al Ashram LLC. It is thus, clear, that deceased was in the employment of the said company. However, as per immigration stamps borne on the passport of the deceased, at page 211, the deceased had last traveled to UAE in May, 2013; and immigration stamp at page 207 of the LCR, shows that he had last returned from UAE in December 2014. Meaning thereby, that for a period of 1 year and 4 months prior to the accident on 30.4.2015, the deceased had not gone to UAE. Admittedly too, no record in form of salary certificate issued by the employer of the deceased has been placed on record by the respondents/claimants to prove the income of the deceased to be Rs.20,000/- per month. Even no other record of the employer-company has been produced by the claimants in support of the said contention. In these circumstances, in my view, ld. Tribunal was in error in taking income of the deceased as Rs.20,000/- per month. Therefore, income of the deceased ought to be taken as per Minimum Wages payable to a highly skilled labourer as per Notification dated 5.4.2017, as per which wages as on 1.9.2015 is Rs.371.33 per day (rounded off to Rs.372/-) x 30 = Rs.11,160/- per month (rounded off to Rs.11,200/- per month). Accordingly, income of the deceased is taken as Rs.11,200/- per month which is further rounded off to Rs.11,500/-, as contended by the ld. Counsel for the appellant-Insurance Company.

As regards dependency of the claimants/respondents, perusal of the Affidavit Ex.PW2/A shows that PW2 Seeta Devi @ Seeto, widow of the deceased has categorically deposed that claimant no.2 is unmarried daughter of the deceased. Claimant no.2 is therefore, taken as dependent of the deceased and a deduction of 1/3rd made towards personal expenses. It is not in dispute that claimants no. 3 and 4 are major sons of the deceased. In this regard, judgment of the Hon'ble Supreme Court in ***SLP No.13931 of 2017 titled as "New India Assurance Co. Ltd. Vs. Vinish Jain & Others";*** and judgments of this Court in ***Harpal Kaur & Others Vs. Sita Ram & Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh & Others, Law Finder Doc Id # 626136 and Sajna Devi & Others Vs. Vijender Kumar & Others, Law Finder Doc Id # 921100,*** *and* ***FAO No.6758/2018,*** decided on 16.3.2023 *titled* ***The New India Assurance Company Limited vs. Smt.Somti Devi and others,*** are relevant, wherein it has been held that major sons being not dependent on deceased are not entitled to compensation. It is accordingly, held that respondents no. 3 and 4 are not entitled to any compensation. Even nothing has been stated or placed on record to show that they were dependent on the earnings of the deceased. Even no case law to the contrary has been cited by ld. Counsel for the claimants/ respondents no. 1 to 4.

In this view of the matter, present appeal is allowed and the compensation payable to the respondents/claimants is reworked as under: -

S.No	Head	Compensation awarded by the Tribunal (in Rupees)	Compensation reworked in this appeal (in Rupees)
1.	Annual income	20,000x12= 2,40,000/-	11,500x12= 1,38,000/-
2	Future prospects	(@ 30%) 72,000/-	(@ 10%) 13,800/-
3	Total income of deceased	3,12,000/-	1,51,800/-
4	Personal and living expenses	(1/4th) 78,000/-	(1/3rd) 50,600/-
5	Income after deduction of personal and living expenses	2,34,000/-	1,01,200/-
6	Multiplier	13	12
7	Amount of compensation	2,34,000x13= 30,42,000/-	12,14,400/-
8	Loss of consortium	1,00,000/-	44,000x4= 1,76,000
9	Loss of care and guidance for minor(sic) children	1,00,000	--
10	Loss of Estate	--	16,500/-
11	Funeral expenses	25,000/-	16,500/-
12.	Total	32,67,000/-	14,23,400/-
13.	Interest	9% per annum	9% per annum

It may be noted that vide order dated 22.5.2017, this Court had stayed recovery of compensation amount beyond Rs. 8.75 lacs. It is directed that the remaining amount of compensation be now released to the claimants no. 1 and 2; and of which claimant no. 1/ widow of the deceased shall get 70%, and the remaining 30% shall be granted to claimant no. 2/ unmarried daughter of the deceased. Claimants no. 3 and 4 shall be entitled to only consortium of Rs. 44,000/- each being major sons of the deceased.

Disposed of in above terms.

Application(s),if any, also stand disposed of.

21/03/2023 **(Nidhi Gupta)**
Joshi **Judge**

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