2023:PHHC:053607

107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5706-2019 (O&M)
Date of Decision :18.04.2023

IFFCO TOKIO GENERAL INSURANCE CO, LTD. …Appellant

Versus

FAIZAL ALI ANDOTHERS ….Respondents

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

Present : Mr. Sachin Ohri, Advocate for the appellant.

Mr. Amaninder Preet Singh, Advocate for respondent No.3 and 4 as guardian in terms of order dated 05.03.2020.

None for the remaining respondents.
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B.S. Walia, J. (Oral)

[1] Challenge in the appeal by the Insurance Company is to the award of compensation of Rs.27,00,326/- by the learned Motor Accident Claims Tribunal, Narnaul (for short – "the Tribunal") to the respondents/claimants on account of death of Nasim Ahmad, son of respondent/claimant Nos.1 and 2 and brother of minor siblings i.e. respondent Nos.3 and 4 on the ground that the income of Rs.13,000/- per month assessed was on the higher side, besides, as per law well-settled by Hon'ble the Supreme Court in **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** since the deceased was unmarried, deduction could have been made only @ 50% and not @ 1/3rd as was done by the learned Tribunal.

[2] Learned counsel for respondent/claimant Nos.3 to 4 on the other hand vehemently opposes the prayer by contending that the

deceased was 18 years old and was doing the work of *Halwai* and earning very good money, besides, although general law was that in case of unmarried deceased, deduction is to be made @ 50% in view of only the mother of the deceased being treated as dependent, yet the exception as carved out by the decision in Sarla Verma's case (Supra) is that the deduction to be made would also depend as to whether parents of deceased / siblings were dependent upon the deceased. Learned counsel for the respondents contends that in the instant case apart from the parents, two minor siblings of the deceased (i.e. respondent Nos.3 and 4) were also dependent upon him, therefore, in the circumstances, deduction made @1/3rd was perfectly justified therefore did not warrant any interference nor did the income assessed warrant any interference in view of the decision in Sarla Verma's case (Supra) as per which, although, ordinarily it is the mother of the unmarried deceased who is to be taken as dependent of the deceased, however, subject to the exception that where family of the deceased bachelor is large and dependant on the income of the deceased, as in the case of widowed mother and large number of younger non-earning sisters or brothers, the personal and living expenses can be restricted to 1/3rd and contribution to the family taken as 2/3rd. Relevant extract of the decision in Sarla Verma's case (Supra) is reproduced as under:-

> *"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and*

> *siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."*

[3] Likewise, relevant extract of the decision of Hon'ble the Supreme Court in **<u>Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram, 2018 (4) RCR (Civil) 333</u>** is reproduced as under:-

> *"8.2.With respect to the issue of deduction from the income of the deceased, the Insurance Company contended that the deduction ought to have been ½, and not 1/3rd, since the deceased was a bachelor.*
> *This issue has been dealt with in paragraph 32 of the judgment in Sarla Verma (supra) wherein this Court took the view that where the family of the bachelor is large and dependent on the income of t hedeceased, as in a case where he has a widowed*

mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one--third, as contribution to the family will be taken as two-third.

Considering that the deceased was living in avillage, where he was residing with his aged fathe r who was about 65 years old, and Respondent No. 2 an unmarried sister, the High Court correctly conside red them to be dependents of the deceased, and made a deduction of 1/3rd towards personal expenses of the deceased.

The judgment of the High Court is, therefore, affirmed on this count.

[4] In the instant case, no doubt the deceased is survived by his parents and two minor siblings, however, learned counsel for respondent Nos.3 to 4/claimants has referred to the evidence of the parents of the deceased as per which the deceased used to look after the entire family and the family was dependent upon his earnings as also to the suggestions put to the witness in cross-examination that they were not dependant on the deceased and of the same having been denied. Learned counsel contends that the deceased was working as a *Halwai* and was also doing work in marriages as a result of which he was earning handsome amount of Rs.25,000/- per month, therefore, neither the income assessed nor the deduction made warranted any interference more so when no evidence to the contrary had been led by the appellant.

[5] I have considered the submissions of learned counsel.

[6] No doubt as per the decision of Hon'ble the Supreme Court

in Sarla Verma's case (Supra) in case of bachelor deceased, only the mother of the deceased is to be taken to be dependent, resultantly 50% of the income of the deceased is to be deducted towards his personal expenses. However, the same is subject to the exception that where there area number of brothers and sisters who are dependent on the earnings of the deceased, then in that situation, deduction can be made @ 1/3rd. Secondly, no evidence to the contrary has been led by the appellant (nor has learned counsel for the appellant referred to any such evidence) to the effect that the deceased was not working as a *Halwai* or was not working in marriages or was not earning Rs.25,000/- per month, besides, minor siblings as well as parents of the deceased were not dependent upon him. The learned Tribunal in the circumstances, has by guess work taken the income of the deceased at Rs.13,000/- per month in view of the decision of this Court in **The New India Assurance Company Limited vs. Ms. Sheela Devi and others, decided on 04.05.2018 in FAO No.2426 of 2018,** besides, **decision of Hon'ble the Supreme Court in Munna Lal Jain and another vs. Vipin Kumar Sharma and others, 2015 (3) Recent Civil Reports, 447.**In the light of position noted above, I am of the considered view that neither assessment of income of the deceased at Rs.13,000/- per month nor deduction made @ 1/3rd warrants any interference. Reference is made to the decision of Hon'ble the Supreme Court in **V. Subbulakshmi and others vs. S. Lakshmi and another, Civil Appeal No.990 of 2008 (arising out of SLP (C) No.19532 of 2006),** decided on 05.02.2008 wherein although no reliable document had been produced in support of the income of the deceased from agriculture and business as Commission Agent, income of Rs. 7000/- per month as assessed by the High Court on the basis of guess work was upheld by

Hon'ble the Supreme Court. Relevant extract of the said decision is reproduced as under:-

> *"18. In the aforementioned fact situation, the High Court has not relied upon all the aforementioned documents, filed by the appellant. It may be true that there was no basis for the High Court to arrive at the conclusion that the income of the deceased was Rs.4,000/- from agricultural operation and Rs. 3,000/- from his commission business, but no reliable document having been produced to show that the deceased was earning an income of Rs.12,500/- per month, as claimed. The High Court, in our opinion, cannot be held to have, thus, committed any grave error in this behalf. There is no dispute as regards application of the multiplier. In a case of this nature, some guess work is inevitable. This Court could have gone into the question provided there was some materials had been brought on record by the appellants upon which reliance could be placed. There being no such material available on record, we are not in a position to interfere with the impugned judgment of the High Court."*

[7] Accordingly, in the light of the position noted above, no ground is made out to interfere with the award passed by the learned Tribunal. Appeal is accordingly, dismissed.

(B.S. Walia)
Judge

18.04.2023
'Amit'

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