IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

222 **FAO-7215-2017 (O&M)**
Date of decision: 27.03.2023

The Oriental Insurance Co. Ltd. **...Appellant(s)**

Vs.

Gurjit Singh & Others **...Respondent(s)**

CORAM: **HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.C. Gupta, Advocate for the appellant.

Mr. Achin Gupta, Advocate for respondents No.1 & 2.

Mr. Varun Dhawan, Advocate for respondent No.4.

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NIDHI GUPTA, J.

Present appeal has been filed by the Insurance Company assailing award dated 06.07.2017 passed by Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as "the learned Tribunal") in MACT Case No.35 dated 31.05.2016 filed under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants/respondents No.1 and 2 herein, are the husband and minor son of deceased-Sarabjit Kaur. Vide the impugned Award, the Learned Tribunal awarded compensation of Rs.18,05,300/- to the claimants/respondents No.1 and 2 along with interest @ 6% per annum from the date of filing the petition till realisation.

2. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Sarabjit Kaur had died due to injuries suffered by her in a motor vehicular accident that took place on 10.05.2016 due to rash and negligent driving of truck bearing registration No.PB-05V-9854 (hereinafter referred to as "the offending vehicle") being driven by respondent No.3, owned by respondent No.4 and insured by the appellant. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant submits:

a) that though no evidence was led by the claimants, yet, the learned Tribunal held the deceased to be a qualified MSC and MCA Teacher who worked as a Computer Teacher in Chenab Group of Education, Quilla Road, Kotkapura and was drawing a salary of Rs.14,000/- per month. Learned counsel submits that thus, learned Tribunal had incorrectly taken income of the deceased as Rs.14,000/- per month;

b) that as per post mortem report (Exhibit P11), age of the deceased had been taken as 40 years at the time of accident;

c) that claimants being two in number, learned Tribunal made deduction of 1/3rd towards personal expenses. It is submitted that however, claimant/respondent No.1/husband of the deceased had remarried on 21.10.2016 i.e. barely six months after the death of deceased and therefore, he could no longer be considered as dependent on the deceased and deduction of 50% ought to have been made towards personal expenses. It is submitted that this fact was duly placed before the learned Tribunal however, the learned Tribunal had not considered this aspect of the matter. In support of this contention, learned counsel relies upon judgment of High Court of Delhi in ***MAC. APP.721/2013 decided on 21.01.2015 titled as "The Oriental Insurance Co. Ltd. VS. Sh. Mukesh Kumar & Others"****;*

d) it is further, very fairly submitted by learned counsel for the appellant-Insurance Company, that claimants are entitled to addition towards future prospects @ 40%; and even other amounts under conventional heads have not been granted by the learned Tribunal as per law.

4. In response, learned counsel for claimants/respondents No.1 and 2 submits:

a) that sufficient cogent evidence had been placed on record by the appellants regarding the employment and income of the deceased. As such, there was no error on part of the Tribunal in taking income of the deceased as Rs. 14,000/- per month;

b) that there can be no disputing the fact that claimant No.1/husband of the deceased, had admitted in his cross-examination that he has remarried. It is submitted that however, claimant No.1 had taken a Panchayati divorce from his second wife on 08.04.2017, which is prior to passing of Award on 06.07.2017, and therefore, deduction of 50% be not made towards personal expenses;

c) that nothing has been granted to the claimants/respondents No.1 and 2 towards future prospects. It is also submitted that even amounts granted under miscellaneous heads are not in accordance with law laid down by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Others (2017) 16 SCC 680.**

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties.

7. Perusal of record of the case shows that claimants had placed on record PG Diploma Certificate of the deceased as Ex.P-1; copy of Master of Science Certificate as Ex.P-2; Detailed Marks Cards of Master of Computer Applications issued by the Punjab Technical University as Ex.P-3 to Ex.P-7; Detailed Marks Cards of BA Part I, II, and III as Ex.P-8 to Ex.P-10; Copies of attendance register as Ex.P-13; Copies of entries of Salary Register as Ex.P-14. Besides this, the claimants had also examined PW3 Baljit Singh Kheewa, Proprietor of Chenab Group of Education, Quilla Road, Kotkapura who deposed that the deceased was employed as a teacher in their institution since 08.01.2016, and was drawing a salary of Rs.14,000/- per month. Admittedly, no evidence in rebuttal was led by the appellant Insurance Company. Accordingly, I find no error in the assessment made by the learned Tribunal of salary/income of the deceased being Rs.14,000/- per month.

8. Date of accident in the present case is 10.05.2016. It is admitted fact on record that claimant/respondent No.1 had remarried thereafter on 21.10.2016. In view of the said undisputed fact on record, in my view, deduction of 50% ought to have been made towards personal expenses as admittedly, claimant/respondent No.1 could no longer be considered to be dependent on the deceased. In this regard, reference may be made to judgment of High Court of Delhi in case of ***Mukesh Kumar (supra)*** cited by learned counsel for the appellant/Insurance Company wherein it has been held as follows:-

> *"34. To sum up, the loss of dependency on account of gratuitous services rendered by a housewife shall be:-*
>
> ....

(vi) If a housewife dies issueless, the contribution towards the gratuitous services is much less, as there are greater chances of the husband's re-marriage. In such cases, the loss of dependency shall be 50% of the income as per the qualificaton stated in (i), (ii) and (iii) above and addition and deduction thereon as per (iv) and (v) above...."

9. Though it has been stated by learned counsel for the respondent-claimants that claimant no. 1 had taken Panchayati divorce from his second wife, however, there is nothing on record to suggest that second marriage of claimant/respondent No.1 has ended in divorce. Even otherwise, admittedly, at best only a Panchayati divorce has been taken. Moreover, claimant No.1 did not prove the validity of the alleged Panchayati divorce in accordance with law. Accordingly, deduction of 50% shall be made towards personal expenses in accordance with law.

10. Further, although this is not an appeal filed by the claimants, an addition of 40% is to be made towards future prospects in accordance with law laid down by Hon'ble Supreme Court in ***Pranay Sethi (supra).***

11. It is also relevant to note that vide order dated 15.01.2018, this Court had directed that entire amount of compensation be deposited in the name of minor son of the deceased in the shape of FDR before the learned Tribunal. This Court had issued abovesaid direction in view of Division Bench judgment of the Madhya Pradesh High Court in ***Anju Mukhi & Another Vs. Satish Kumar Bhatia & Others 1998 ACJ 400,*** wherein the surviving spouse-wife therein was held not entitled to compensation after her remarriage. In the present case too, the claimant husband, as in the relied upon case, remarried after 6 months of death of the deceased-wife. Though in the present case, it has been submitted by claimant/respondent No.1 that he was dependent on the deceased, however, respondent No.1 led no evidence in this behalf to prove his alleged dependency on the deceased, even otherwise, said statement of the respondent No.1 does not inspire belief as it is unlikely that he can enter into second marriage, if he is unable to support second wife. Learned counsel for the claimants/respondents

No.1 and 2 is unable to dispute the above stated legal position in case of ***Anju Mukhi (supra)***, nor has shown anything to the contrary.

12. Accordingly, in the present case, as dependency of the respondent No.1 is not proved, and in accordance with judgment in case of ***Anju Mukhi (supra)*** it is directed that the entire amount of compensation, including enhanced compensation, shall be held in an FDR with the learned Tribunal, to be released to the claimant No.2/minor son of the deceased-Sarabjit Kaur, when he attains majority.

13. In view of the above discussion, compensation is re-worked as follows:-

HEADS	**MACT**	**RE-WORKED**
Income	Rs.14,000/- per month	Rs.14,000/- per month
Future prospects	NIL	40% (Rs.5,600/-)
Total Income	Rs. 14,000/-	Rs.14,000/- + Rs.5,600/- = Rs.19,600/-
Deduction	$1/3^{rd}$ = Rs. 9,335/-	50% = Rs.9,800/-
Annual dependency	Rs. 1,12,020/-	Rs.9,800/- x 12 = Rs.1,17,600/-
Multiplier	15	15
Total annual dependency	Rs.16,80,300/-	Rs.17,64,000/-
Loss of Estate	NIL	Rs. 15,000/-
Funeral Expenses	Rs. 25,000/-	Rs. 15,000/-
Parental Consortium to Claimant/ R. no. 2	NIL	Rs. 44,000/-
Spousal Consortium	Rs. 1 lac	NIL
Total	**Rs.18,05,300/-**	**Rs.18,38,000/-**
Enhanced by		**Rs.32,700/-**

14. Rate of interest shall remain the same as determined by the learned Tribunal. Present appeal stands disposed of accordingly.

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

27.03.2023 **(Nidhi Gupta)**
Sunena **Judge**

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