IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:127596
FAO-4652-2013 with
Cross-OBJ-126-CII-2015
Reserved on:- 11.08.2023
Pronounced on:- 03.10.2023

ORIENTAL INSURANCE COMPANY LTD. ...Appellant

Versus

DEEP KAUR AND ORS. ....Respondents.

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ashwani Talwar, Advocate for the appellant.
Ms. Ekta Thakur, Advocate for the respondents.

*****

AMARJOT BHATTI, J.

1. The appellant Oriental Insurance Company Limited has filed an appeal against the impugned award dated 02.07.2013 passed by Motor Accident Claim Tribunal, Chandigarh whereby the claimants have been awarded compensation of Rs.20,28,041/- along with interest @ 6% per annum from the date of filing of the claim petition till realization of the amount by alleging that the compensation awarded by Motor Accident Claim Tribunal is towards the higher side.

On the other hand, Deep Kaur and others i.e. the claimants/respondent Nos.1 to 4 have filed their cross-objections against the award dated 02.07.2013 as referred above, by alleging that compensation is towards the lower side.

2. The facts of the case are that Deep Kaur widow, Ranjit Singh, Tapan Singh and Kamaljit Singh being sons of Harbhajan Singh have filed claim petition under Section 166 of the Motor Vehicle Act for grant of compensation on account of death of late Harbhajan Singh in a motor vehicle accident on 06.08.2009. At the time of accident, Harbhajan Singh was 59 years old. He was in Government Service with Ordnance Cable Factory, Chandigarh and was drawing salary of Rs.25,000/- per month. On the fateful day of 06.08.2009 Harbhajan Singh was coming from Slip Road Industrial Area Phase-I, Chandigarh towards village Hallo Majra on his cycle. At about 6.15 pm, when he reached near the traffic light point he was on the correct side of the road and respondent No.1 came on his Car No.CH-03-Z-1031 at a high speed in a rash and negligent manner from the side of poultry farm and struck against the cycle of Harbhajan Singh. In this accident, Harbhajan Singh received multiple injuries including head injuries. He was taken to Government Medical College and Hospital, Sector-32, Chandigarh and further he was taken to Mukut Hospital, Sector-34, Chandigarh where he was declared brought dead. The said accident took place due to rash and negligent driving of respondent No.1 while driving Hyundai Verna car CH-03-Z-1031. At the time of accident Harbhajan Singh was working as Examiner Quality Control in the Ordnance Cable Factory and he was to retire at the age of 60 years. He was maintaining good health. The claimants were dependent on his income.

The claimants have prayed for compensation to the tune of Rs.25,00,000/-. Hence, the present claim petition.

3. Notice of claim petition was given to the respondents. The respondent Nos.1 and 2 filed their joint written statement denying some of the facts for want of knowledge and it was prayed that the claimants may be put to strict proof of the same. In-fact, the deceased who was going on his cycle took the turn towards his right side to go to his village when there was a red signal towards that side and there was a green light to go straight. The respondent was going towards Zirakpur on green light at a normal speed. It was deceased who struck with the car of respondent. There was no fault on the part of the answering respondent as the accident took place due to the negligence of deceased. The compensation claimed by the claimants is highly excessive.

4. The Insurance Company also filed the written statement taking preliminary objections that the claimants have no cause of action to file the claim application against the answering respondent. This claim petition has been filed by the claimants in collusion with the other respondents. The driver of alleged offending car No.CH-03-Z-1031 was not holding valid and effective licence. He was driving the car in violation of the terms and conditions of the Insurance Policy. On merits, the facts are denied and the claimants be put to strict proof of the averments made in the claim petition. Even otherwise the amount of compensation claimed by the claimants is highly exaggerated. No accident took place as claimed by the claimants. It is prayed that the claim petition may kindly be dismissed with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 06.05.2011:-

> 1. Whether Harbhajan died in road side accident which took place on 06.08.2009 at about 6.15 pm at Hallomajra near Chandigarh Ambala road, Chandigarh because of rash and negligent driving of respondent No.1 while driving vehicle bearing registration No.CH-03-Z-1031? OPP
>
> 2. If issue No.1 is proved in affirmative to what amount of compensation the claimants are entitled and from whom? OPP
>
> 3. Whether the driver of offending vehicle was not holding a valid & effective driving license at the time of accident if so its effects? OPR
>
> 4. Relief.

6. In order to prove the claim petition, the counsel for claimants had examined Tapan Singh PW1, Paramjit Singh PW2, Dinesh P. Gaur, Supervisor Ordnance Cable Factory, Ministry of Defence, Chandigarh as PW-3 and closed the evidence.

7. In order to rebut the case of the claimants, respondent Nos. 1 and 2 tendered documents copy of certificate of registration Ex.R1, copy of driving licence Ex.R2 and copy of insurance policy Ex.R3 and closed the evidence.

Respondent No.3 examined Gurbir Singh Cheema, Jr. Assistant, DTO Office, Mohali as RW1 and tendered the Insurance policy Ex.R1 and closed the evidence.

8. After hearing the arguments advanced by learned counsel for both the parties, the claim petition filed by the claimants was partly allowed by passing impugned Award dated 02.07.2013 vide which the compensation was awarded to the tune of Rs. 20,28,041/- as detailed therein by holding the liability of the respondents as joint and several

along with interest at the rate of 6% per annum from the date of filing of the claim petition till the amount is actually realized. Feeling aggrieved of this Award, the Insurance Company has filed the present appeal and in return the claimants have filed their cross-objections.

9. I have heard the arguments advanced by learned counsel for the Insurance Company as well as learned counsel for respondent Nos.1 to 4/claimants and have gone through the trial court record with the able assistance of the counsels.

The learned counsel for the Insurance company argued that the quantum of compensation awarded by the Motor Accident Claim Tribunal vide impugned award dated 02.07.2013 is towards the higher side. The deceased Harbhajan Singh at the time of accident was 59 years of age. He has left behind the widow and three sons who are married. Considering the age of claimant Nos. 2 to 4 it cannot be said that they were dependent on their old father late Harbhajan Singh. Only Deep Kaur widow was dependent on her husband. The learned Motor Accident Claim Tribunal wrongly considered all the claimants as dependents of late Harbhajan Singh and accordingly deducted 1/4th income towards personal expenditure and the dependency of the family was considered as 3/4 share of the income. In-fact, widow was only dependent on her husband, therefore, 1/2 income should have been deducted towards the personal expenditure and the dependency of Deep Kaur was to the extent of 1/2th share.

Learned counsel for the Insurance company further referred to the statement of Paramjit Singh PW2 who has proved on record the salary certificate of late Harbhajan Singh Ex.P16 according to which his salary was mentioned as Rs.22,569/- per month. As per the revised salary certificate Ex.P17 his salary was mentioned as Rs.24,374/- w.e.f. 01.05.2007. After deduction of income tax his annual income was considered Rs.2,81,931. The learned Motor Accident Claim Tribunal awarded Rs.19,03,041/- as compensation on account of death of late Harbhajan, Rs.25,000/- towards funeral expenditure and Rs.1 lakh towards loss of consortium thus granted Rs.20,28,041/- as compensation. In-fact late Harbhajan Singh was to retire after a period of about 1 year, therefore, the income of late Harbhajan for this period should have been separately considered and thereafter he would have become a pensioner and accordingly, the income should have been considered as that of pensioner and the lower multiplier should have been applied. Therefore, the compensation awarded by the Motor Accident Claim Tribunal by passing award dated 02.07.2013 is excessive and without justification.

10. On the other hand, learned counsel representing the respondent Nos.1 to 4/claimants/cross objectors raised the issue that at the time of accident Harbhajan Singh was 49 years of age and was working in Ordnance Cable Factory, Chandigarh and was earning Rs.25,000/- per month. The learned Motor Accident Claim Tribunal wrongly considered his age as 59 years. The learned tribunal has committed error by not granting 15% increased income towards future prospects of the deceased as per the settled law cited in **2013 (3) CCC 15 Supreme Court Rajesh and others Vs. Rajbir Singh and others**. The counsel for cross-objectors/respondents have furnished their own calculation claiming the compensation to the tune of Rs.23,97,494/-. Lastly it was pointed out that the interest granted at the rate of 6% per annum is also towards lower side

and it should have been @ 7.5% per annum. Counsel for the respondent Nos.1 to 4/Cross-Objectors/claimants prayed for enhanced amount of compensation.

11. I have considered the arguments advanced by learned counsel for both the sides. In this case, accident which took place on 06.08.2009 in which Harbhajan Singh lost his life is not disputed. The findings given by the Motor Accident Claim Tribunal pertaining to issue No.1 are not disputed by any of the counsel. The arguments were advanced by learned counsel for the Insurance company as well as by learned counsel for respondent Nos.1 to 4 / cross-objectors/claimants only regarding the quantum of compensation awarded by the Motor Accident Claim Tribunal while deciding issue No.2. In order to prove the facts of the case, Tapan Singh one of the claimant has stepped into the witness box as PW1 who is also eye witness to the accident. He had tendered into evidence his affidavit Ex.PW1/A where he categorically stated that his father was 59 years of age at the time of accident and was working in the Ordnance Cable Factory, Chandigarh. At the time of filing of cross-objections, learned counsel for the respondent Nos.1 to 4/cross-objectors/claimants wrongly claimed that late Harbhajan Singh was 49 years of age at the time of said accident. The claimants had examined Dinesh P. Gaur, Supervisor Ordnance Cable Factory PW3 who categorically stated that late Harbhajan Singh was 58 years of age as his date of birth was 15.11.1950. He being Central Government Employee was to retire at the age of 60 years. Therefore, at the time of accident on 06.08.2009 late Harbhajan Singh was 58 years old and he was to turn 59 in November, 2009. In the case in hand, the salary of late Harbhajan Singh is proved on record from the testimony

of Paramjit Singh (PW-3). The salary certificate is Ex.P16 in which the salary is mentioned as Rs.22,569/- and as per revised salary certificate, Ex.P17, the salary is mentioned as Rs.24,374/- w.e.f. 01.05.2007. Therefore, late Harbhajan Singh was a Central Government Employee having fixed income. Therefore, considering his age as 58 years plus by applying the authority cited in **2013 (3) CCC 15 Supreme Court, case titled as Rajesh & Ors Vs. Rajbir Singh and others,** he is entitled to 15% increased income towards future prospects. This aspect of the case has not been considered wrongly by Motor Accident Claim Tribunal while calculating the quantum of compensation. Secondly, as per the claim of Insurance company, there should be 1/2 deduction towards personal expenditure whereas the learned Motor Accident Claim Tribunal while considering the number of family members deducted 1/4 income towards personal expenditure. Admittedly, Deep Kaur is the widow and claimant Nos.2 to 4 are the sons of late Harbhajan Singh. All of them are major and married sons. Therefore, it cannot be said that they were completely dependent on the income of their late father Harbhajan Singh. However, late Harbhajan Singh was an earning hand and he was big support towards the family. Considering this fact 1/3rd income can be deducted towards personal expenditure and 2/3rd income towards the dependency of widow and sons. Considering these facts the compensation is re-calculated as under:-

The monthly income of late Harbhajan Singh is taken as Rs.24,374/- and annual comes out to be Rs.2,92,488/-. By giving 15% increase in income i.e. Rs.43,873/-, the annual income comes to be Rs.3,36,361/- and round figure is taken as Rs.3,36,360/-. Considering his income and the tax applicable in the year 2009 approximately Rs.7,600/- are deducted towards the tax and the balance annual income comes out to Rs.3,28,760/-. 1/3rd income is deducted towards the personal expenditure and the annual dependency of the family is taken as Rs.2,19,173/-. Considering the age of late Harbhajan Singh as 58 years plus, multiplier of 9 is appropriate by applying the authority cited in **2009 (3) R.C.R. (Civil) 77 case titled as "Sarla Verma Vs.Delhi Transport Company"** and with this multiplier the amount of compensation comes out to Rs.19,72,557/-. Deep Kaur widow and respondent Nos.2 to 4/claimants have lost their father, therefore, they are granted compensation for loss of consortium at the rate of Rs.40,000/- each i.e. Rs.1,60,000/-. They are further granted Rs.15,000/- for loss to estate and Rs.15,000/- for funeral expenditure and the total amount of compensation comes to Rs.21,62,557/-.

Therefore, the compensation awarded by Motor Accident Claim Tribunal to the tune of Rs.20,28,041/- is slightly towards the lower side. The difference of compensation calculated by this Court is to the tune of Rs.1,34,516/-. The sons have been granted sufficient compensation by Motor Accident Claim Tribunal. Therefore, the aforesaid amount of Rs.1,34,516/- is awarded in favour of widow Deep Kaur who is respondent No.1/claimant No.1/ cross-objector. The rate of interest awarded by Motor Accident Claim Tribunal on the compensation awarded in this case does not require interference. The aforesaid enhanced amount is granted with interest @ 6% per annum from the date of filing of present appeal till realization of the amount.

12. With these observations, the appeal preferred by the Insurance Company is declined and the cross-objections filed by the respondent

Nos.1 to 4 / cross-objector/claimants is accepted and the award passed by Motor Accident Claim Tribunal dated 02.07.2013 stands modified accordingly.

Pending application(s), if any, also stand disposed off.

03.10.2023 **(AMARJOT BHATTI)**
snd **JUDGE**

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