IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R-815

XOBJC-53-CII-2013 in/and
FAO No.4800 of 2011
Reserved on : 17.01.2023
Date of Decision : 20.01.2023

Oriental Insurance Company Limited ....Appellant

VERSUS

Jai Parkash and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinod Chaudhri, Advocate for the appellant.

Mr. Ram Pal Verma, Advocate
for respondent nos.1 to 4/cross-obejctors.

Mr. Ashwani Gaur, Advocate for respondent nos.5 and 6.

ALKA SARIN, J.

By way of the present order, FAO No.4800 of 2011 and the cross objections (XOBJC-53-CII-2013) preferred by the claimant-respondent Nos.1 to 4 are being disposed off.

The appellant-Insurance Company has preferred the present appeal against the award dated 25.05.2011 passed by the Motor Accidents Claims Tribunal, Sonipat (hereinafter referred to as the 'Tribunal') on the ground of high quantum, awarded to the claimant-respondent Nos.1 to 4 on account of death of Sombir alias Sonu (hereinafter referred to as the 'deceased') in a motor vehicle accident with truck bearing registration no.HR-69A-7544 (hereinafter referred to as the 'offending vehicle'). The cross objections have been preferred by the claimant-respondent Nos.1 to 4 for enhancement of the compensation as granted by the Tribunal.

Learned counsel for the appellant-Insurance Company would contend that the present was a case of contributory negligence. It is further the contention that the law as it stood at the time the matter was decided by the Tribunal, the amount awarded by the Tribunal was in excess.

Learned counsel appearing on behalf of the claimant-respondent Nos.1 to 4 has contended that the deceased at the time of the accident was 19 years of age and the minimum wages at the time of the accident were Rs.4348/-. It is further the contention that now as per the law laid down in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**; **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**; **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130];** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**, a multiplier of 18 ought to have been applied whereas the Tribunal had applied a multiplier of 13 keeping in view the age of the parents. It is further the contention that addition of 40% ought to have been allowed towards future prospects. Learned counsel for the claimant-respondent Nos.1 to 4 has further contended that amounts also ought to have been awarded under the conventional heads as well as loss of consortium.

I have heard learned counsel for the parties.

The Tribunal in the present case has awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly income of the deceased	Rs.4,000/-
2	Annual dependency of the claimants after deduction of 1/3rd	[4000 - 1300] = Rs.2,700/-

3	Annual income of the deceased after applying the multiplier of 13	[2700 x 12 x 13] = Rs.4,21,200/-
4	Amount towards transportation, funeral expenses	Rs.10,000/-
	Total Compensation	**Rs.4,31,200/-**

First of all, dealing with the argument raised by learned counsel for the appellant-Insurance Company that the present case was a case of contributory negligence, the said argument deserves to be rejected on the ground that there was sufficient evidence on the record to show that the offending vehicle was being driven in a rash and negligent manner. PW4 Sudhir, who is the author of the FIR and an eye-witness, has stated that the accident had occurred due to rash and negligent driving of the offending vehicle. There is not an iota of evidence on the record to show that there was any contributory negligence on the part of the deceased. Thus, the argument of learned counsel for the appellant-Insurance Company stands rejected.

The second argument raised by the learned counsel for the appellant-Insurance Company that the Tribunal had awarded the compensation in excess as per the law prevailing at that point of time and hence the amount should be reduced, also deserves to be rejected. It is trite that an appeal is a continuation of the proceedings and needs to be decided in view of the law prevailing at the time of deciding the appeal. Any change in law which has taken place between the date of decree and the decision of the appeal has to be taken into consideration. Therefore, the argument stands rejected.

The Tribunal in the present case has assessed the notional income of the deceased as Rs.4,000/-. However, the same ought to have been assessed on the basis of minimum wages. The minimum wages, as per the counsel for the parties, prevalent at the time of the accident were Rs.4,348/- per month. Being a bachelor, a deduction of 50% would need to be applied. Further 40% addition would also have to be made keeping in view the law laid down by Hon'ble Supreme Court in the cases referred to by counsel for the claimant-respondent Nos.1 to 4. The Tribunal has applied a multiplier of '13' keeping in mind the age of parents of the deceased whereas a multiplier of '18' as per age of the deceased had to be applied in the present case. Further, under the conventional heads also a cumulative amount of Rs.33,000/- would be payable. The deceased in the present case was a 19 years old boy and there is no evidence on the record that he was earning at the time of his death. Hence, claimant-respondent Nos.3 and 4, who are siblings of the deceased, cannot be held to be dependent on the deceased. However, they would be entitled to compensation towards loss of consortium under the head of filial consortium. In view thereof, Rs.44,000/- each is awarded to both the parents and Rs.44,000/- each to the two siblings.

In view of the above, the enhanced compensation to which the claimant-respondent Nos.1 to 4 are entitled is re-worked as under :

Sr. No.	Heads	Compensation Awarded
1	Annual Income of the deceased	[4348 x 12] = Rs.52,176/-
2	Annual dependency of the claimants after deduction of 50%	[52176 - 26088] = Rs.26,088/-
3	Future prospects @ 40%	[26088 + 10435] = Rs.36,523/-
4	Multiplier of 18	[36523 x 18] = Rs.6,57,414/-
5	Loss of Consortium (i) Filial (parents and 2 siblings)	Rs.1,76,000/- (44000 x 4)
6	Loss of Estate	Rs.16,500/-
7	Funeral Expenses	Rs.16,500/-

	Total Compensation	**Rs.8,66,414/-**
	Amount Awarded by the Tribunal	**Rs.4,31,200/-**
	Enhanced amount	**Rs.4,35,214/-**

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 7.5% from the date of filing of the claim petition till realization of the entire amount.

Barring the amount as awarded to the siblings under the head filial consortium, the remaining compensation shall be apportioned between the parents equally. The appeal filed by the appellant-Insurance Company is accordingly dismissed. The cross objections filed by the claimant-respondent Nos.1 to 4 stand allowed and the award stands modified accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
20.01.2023 **JUDGE**
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO