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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3246-2016 (O&M)
Date of decision: January 11, 2023

Shriram General Insurance Company Limited

….Appellant

versus

Sarbjeet Kaur and others

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Punit Jain, Advocate for the appellant.

Mr. Deepak Aggarwal, Advocate for respondents No.1 to 5.

None for respondents No.6 and 7.

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ARUN MONGA, J. (ORAL)

Appellant before this Court is the Insurance Company seeking to set aside the impugned award dated 16.02.2016 passed by learned Motor Accidents Claims Tribunal, Bathinda.

2. Succinct facts as noted by the Tribunal are as below:

> "*2. The brief facts of the case of the claimants, as detailed in the claim petition, are that on 9.3.2014, the deceased Harinderjeet Singh was travelling in Honda City car No. MH-04CM-8050, which was owned and driven by Ex. Sarpanch Kewal Singh s/o Chhota Singh r/o village Jangiana, Distt. Barnala and they were returning from village Salabatpura, Tehsil Phul, Distt. Bathinda, after finishing their job and when they reached near the bridge of canal minor in the revenue limits of village Burj Rajgarh, Tehsil Phul, Distt. Bathinda and he was driving the car on his correct side. At about 6.30/6.45 p.m., a Tata Ace vehicle/Chhota Hathi bearing registration No. PB-29M-9284 owned by the respondent no. 2 and driven by respondent no. 1, came at a very high speed, rashly and negligently and hit against their car, as a result of which Harinderjeet Singh received multiple grievous injuries on his person and aforesaid Kewal Singh also received injuries on his right arm, chest and head and both were got admitted in civil hospital Barnala, after getting first aid from the civil hospital, Badour (Barnala) and on*

> *the next day i.e., 10.3.2014, Harinderjeet Singh succumbed to his injuries in civil hospital, Barnala. Post mortem on the dead body was conducted in civil hospital, Barnala on 11.3.2014. Further, it is stated that regarding the accident in question case FIR No.23 dated 10.3.2014, U/s 304-A/279/337/338 IPC was registered against the respondent no.1. It is further averred that the deceased was aged 48 years, and he was serving as Salesman in Co-operative Society, Bhadour, Distt. Barnala and besides this he was also doing agricultural work and dairy farming. It is further stated that the deceased was drawing Rs. 31,000/- as salary and apart from this, he was earning Rs.10,000/- by doing agricultural work and dairy farming. That untimely death of Harinderjeet Singh has ruined the life of claimants, who were dependent upon him. As such, the claimants have claimed compensation from the respondents."*

3. Upon notice, respondents-driver and owner of the offending vehicle filed joint written statement taking objections that claimants have got no cause of action and *locus standi* to file the claim petition. Respondent-Driver was holding valid driving licence and did not cause alleged accident. Offending vehicle was duly insured with respondent-Insurance Company. On merits, accident in question was denied and the same was not caused by respondent-Driver. Alleged income of the deceased was also denied.

4. Appellant-Insurance Company filed written statement alleging that deceased was sitting in Honda City Car, but neither the owner nor insurer of the said vehicle had been impleaded as party. Driver was not holding a valid driving licence at the time of accident and the owner of TATA ACE in question was not holding valid registration certificate and fitness certificate.

5. Learned Tribunal framed the following issues:

> "*1) Whether Harinderjeet Singh died in motor vehicle accident, which took place on 9.3.2014, at about 6.30/ 6.45 p.m., in the area of village Burj Rajgarh, Tehsil Phul, District Bathinda? OPP*
> *2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what extent and from whom? OPP*
> *3. Whether the petition is not maintainable? OPR*

> 4. *Whether claimants have no locus standi to file claim petition? OPR*
> 5. *Relief.*"

6. On appraisal of record/ evidence, learned Tribunal decided issue No.1 in favour of claimants and Issues No.3 & 4 were decided against the appellant and respondents-driver and owner of the offending vehicle. Issue No.2 was disposed of. Consequently, compensation of Rs.26,20,000/- was awarded in favour of the claimants.

7. Learned counsel for the appellant-Insurance Company contends that learned Tribunal erred while deducting 1/4th as personal expenditure and took dependency of 3/4th while calculating the compensation. Claimant No.2-Jabarjosh Singh and claimant No.3-Babbarjosh Singh are aged about 24 years and 22 years and are major sons of the deceased and claimant No.5 is the father. Hence, they are not dependent on the deceased.

8. He further contends that learned Tribunal erred while considering gross salary of deceased and also while not deducting income tax as per statutory requirement. He relies on Apex Court judgment rendered in **Shyamwati Sharma versus Karan Singh,** reported as **2010 (3) RCR Civil 741** to contend that 30% income tax and applicable education cess should have been deducted. Learned counsel for the appellant submits his calculations, which are as below:

Deceased	Harinderjeet Singh
Date of accident/death	09.03.2014
Age	58 years
Marital Status	Married
Income of the deceased	Rs.30,679/- per month

Future prospects	15% (Rs.30,679+4,601) = Rs.35,280/-
Annual Income	Rs.4,23,360/- annual income (Rs.35,280x12)
Less income tax (**Rs.27,000/-**)	Rs.3,96,360/- (Rs.4,23,360-27,000/-)
Deduction in dependency	1/3rd (3,96,360- 1,32,120)=Rs.2,64,240/-
Annual dependency	Rs.23,78,160/- (Rs.2,64,240x9)
Multiplier	9
Conventional Heads (funeral exp. and loss of estate)	Rs.70,000/-
Total	Rs.24,48,160/- (Rs.23,78,160+70,000)
Compensation awarded by the Tribunal	Rs.26,20,000/-
Amount of compensation to be recovered	Rs.1,71,840/- (Rs.26,20,000-24,48,160/-)

9. On the other hand, learned counsel for respondents No.1 to 5-claimants contends that learned Tribunal below did not grant future prospects. According to him, calculations ought to be as below:

Deceased	Harinderjeet Singh
Date of accident/death	09.03.2014
Age	58 years
Marital Status	Married
Income of the deceased	Rs.30,679/- per month
Future prospects	15% (Rs.30,679+4,601) = Rs.35,280/-
Annual Income	Rs.4,23,360/- annual income (Rs.35,280x12)
Deduction in dependency	1/4th Rs.1,05,840/-
Less income tax (**Rs.16,815/-**)	Rs.3,00,705/- (Rs.4,23,370-1,05,840-16,815/-)
Multiplier	9

Annual dependency	Rs.27,06,345/- (Rs.3,00705 x 9)
Conventional Heads (funeral exp. and loss of estate)	Rs.30,000/- Rs.15,000/- + Rs.15,000/-)
Consortium	Rs.40,000/-
Philial Consortium	(Rs.1,60,000/- (Rs.40,000x4)
Total	Rs.29,36,345/- (Rs.27,06,45/- + Rs.30,000/- + Rs.40,000/- + Rs.1,60,000/-)
Compensation awarded by the Tribunal	Rs.26,20,000/-
Enhanced amount of compensation to be paid	Rs.3,16,345/- plus interest (Rs.29,36,345-Rs.26,20,000/-)

10. Refuting the above, learned counsel for the petitioner-Insurance Company contends that since no cross-appeal/ cross-objections have been filed by the claimants, the compensation cannot be increased in an appeal by the insurer. In support of his contention, he relies on Apex Court judgment rendered in **Ranjana Prakash and others versus Divisional Manager and another**, reported as **2011 (4) RCR (Civil) 218**. Relevant para-8 thereof reads thus:-

> "*8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.*"

11. Having heard arguments, I am of the opinion that to the extent that learned Tribunal did not factor income as per the salary slip of the deceased, the same ought to have been done. In addition, further error seems to have been committed by the learned Tribunal by deducting 1/4th instead of 1/3rd of income for personal expenses of the deceased and by not allowing addition for future prospects of the deceased while making computation of the amount of the award.

12. In the premise, applying the principles enunciated by Supreme Court in **Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, the amount of just compensation is recalculated as below:

Deceased	Harinderjeet Singh
Date of accident/death	09.03.2014
Age	58 years
Marital Status	Married
Income of the deceased	Rs.30,679/- per month
Future prospects	15% (Rs.30,679+4,601) = Rs.35,280/-
Annual Income	Rs.4,23,360/- annual income (Rs.35,280x12)
Less income tax (Rs.27,000/-)	Rs.3,96,360/- (Rs.4,23,360-27,000/-)
Deduction in dependency	1/3rd (3,96,360-1,32,120)=Rs.2,64,240/-
Annual dependency	Rs.23,78,160/- (Rs.2,64,240x9)
Multiplier	9
Conventional Heads (funeral exp. and loss of estate)	Rs.70,000/-
Philial Consortium	(Rs.1,60,000/- (Rs.40,000x4)
Total	Rs.26,08,160/-

	(Rs.23,78,160+70,000+1,60,000)
Compensation awarded by the Tribunal	Rs.26,20,000/-
Amount of compensation to be recovered	Rs.11,840/- (Rs.26,20,000-Rs.26,08,160/-)

13. Accordingly, the impugned award is modified in terms of the above computations. Excess amount of compensation of Rs.11,840/-, if already paid shall be refundable by the claimants to the insurance company.

14. Appeal is partly allowed in above terms.

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

(ARUN MONGA)
JUDGE

January 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No