IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 5811/2014 (O&M)

Date of decision: 22.02.2023

Cholamandalam MS General Insurance Co. Ltd.

………..Appellant

Vs.

Jaswant and others

………..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms.Yagyashree Singh, Advocate for
Mr.Rajneesh Malhotra, Advocate for the appellant/Insu. Co.

Mr. Sanchit Punia, Advocate for respondetns 1,4,5 (claimants)

Mr. Vinay Kumar,Arya, Advocate for Mr. Sandeep Goyat, Advocate for respondent no.3(owner)

Nidhi Gupta, J.

Present appeal has been filed by the appellant Insurance Company challenging the Award dated 22.2.2014 passed by Motor Accident Claims Tribunal, Hisar (for short 'the Tribunal') in Claim Petition MACT case No.279 of 2012, filed by the claimant/respondent no.1 herein, u/s 166 of the Motor Vehicles Act, 1988, whereby compensation of Rs. 5.65 lacs has been awarded to respondent no.1/ claimant for the death of deceased Nand Lai. Claimant is the brother of deceased Nand Lai.

Brief facts of the case are that the learned Tribunal on appraisal of the pleadings and evidence led before it, concluded that the deceased Nand Lai, brother of respondent no.1 had died due to injuries suffered by him in a motor vehicular accident that took place on 24.10.2012 due to rash and negligent driving of Mahindra and Mahindra Maxi Truck bearing registration No. HR-39-B-5699 (hereinafter referred to as 'the offending vehicle'), being driven by respondent no.2 herein, and owned by respondent no.3. Proforma Respondents no. 4 and 5 herein, are the other brothers of deceased Nand Lal, who have given up their claim in respect of compensation awarded by the Tribunal. Vide impugned Award, appellant, and respondents no. 2 and 3 were jointly and severally were held liable to pay the compensation along with interest @ 7.5% per annum from the date of filing claim petition till realization.

Vide order dated 11.1.2016 this Court had directed that 50% of the compensation be released to the claimant without any security, and balance 50% of the awarded amount has still not been released.

It is inter alia, submitted by the learned counsel for the appellant Insurance Company that the claimant is the brother of the deceased and, therefore, cannot be taken as a 'dependent' as understood in legal parlance, and is therefore, not entitled to any compensation. It is submitted that as per para 15 of judgment of Hon'ble Supreme Court in **Sarla Verma and others v Delhi Transport Corporation and Another, Law Finder Doc Id# 188882**, appellant is not entitled to compensation as his dependency upon deceased has not been established on record.

It is further submitted that the deceased was a bachelor. He was 38 years of age at the time of his death as per his Post Mortem Report Ex.P2. It is submitted that deceased being a self-employed labourer and not in a permanent salaried job, future prospects @ 40% ought to have been granted, whereas the learned Tribunal has incorrectly granted future prospects @ 50%.

It is further stated that the ld. Tribunal has erroneously assessed income of the deceased as Rs. 4000/- per month without there being any proof of the same.

Per contra, it is submitted by the learned counsel for the respondent/claimant that the learned Tribunal has recorded the contention of the claimant in para 21 of the impugned Award as follows:-

> *"21. On the other hand, learned counsel for the petitioner contended although the deceased Nand Lai was a bachelor but he was contributing his entire income to the welfare of his brother and his family with whom he was residing. Moreover, petitioner Jaswant is younger brother of deceased Nand Lai and he and his family was more dependent upon the income of deceased Nand Lai. In support of his contention learned counsel for petitioner has relied upon case law titled* ***Susheel Kumar Ezkiel and another versus U. Rajasehar and another, 2013 ACJ 839 (AP").***

Learned counsel also refers to para 25 of the impugned Award wherein learned Tribunal has recorded that the respondents led no evidence to rebut the evidence led by the claimant in support of his contentions. It is submitted that therefore, the dependency of the claimant on the deceased is established.

Learned counsel relies upon judgment of the Andhra Pradesh High Court in **Susheel Kumar Ezkiel v U. Rajasekhar, Law Finder doc Id # 423961**, to submit that in the said case also in similar circumstances where the deceased was a bachelor and contributing his entire income to the welfare of the family of his brother who was a Government pensioner and his wife who was a house hold lady, High Court of Andhra Pradesh had held that the claimant-brother therein was the legal representative and therefore, entitled to claim compensation for the death of the deceased.

Learned counsel also refers to judgment of the Hon'ble Supreme Court in **N. Jayasree v. Cholamandalam MS General Insurance Company Ltd. (SC) : Law Finder Doc Id # 1900214** to submit that in the said case even mother-in-law of the deceased had been treated as a dependent and legal representative of the deceased for the purpose of claim petition under the Motor Vehicles Act,1988.

No other argument has been raised on behalf of the parties.

I have heard learned counsel for the parties and given my thoughtful consideration to the rival submissions advanced on behalf of the learned counsel for the parties.

In my view, there is no cogent evidence on record as per which it may be established that the claimant was dependent on the deceased. There is just a bald averment on the part of the respondent no.1/claimant that the deceased was contributing his entire income to the welfare of the claimant and his family. However, "no evidence" in support of said assertion has been led by the claimant. No proof has been produced by the claimant to show that he and his family were dependent solely on the earnings of the deceased.

In fact, to the contrary, the pleaded case of the claimant before the Tribunal was that on 24.10.2012/the day of the accident, "*the petitioner along with his brother deceased Nand Lai after doing labour work was coming towards Bus Stand, Village Kohli on foot*". In my view, this averment indicates that the claimant was also engaged in labour work, and after both brothers had finished their work for the day, they were returning. It is the assertion of the claimant himself that he was also doing labour work alongwith his deceased brother, and both he and his brother were returning home after doing labour work when the unfortunate accident took place.

Further, it has been recorded in para 23 of the impugned Award that the claimant had borne all the expenses of funeral etc. of deceased Nand Lai, and he/ claimant only was looking after him prior to his death. Needless to say, this is also indicative of the claimant having some independent source of income in order to have been looking after the deceased prior to his death.

No doubt, it has been stated by the claimant/respondent.1 that the deceased was contributing his entire income for the welfare of the claimant and his family, however, there is not a smidgen of evidence on record in support of this contention. Accordingly, from the above discussion it transpires that: a) there is no proof on record that the claimant and his family were entirely dependent on the income of the deceased; b) there is no proof that the deceased was contributing his entire income to the claimant; c) on the contrary the claimant has admitted that he along with the deceased was returning *after doing labour work* when the accident happened; d) the claimant was also looking after the deceased prior to his death, therefore, presumption is that he would have his own independent source of income.

Therefore, in my view, in the present case, in view of the facts of the case, as also in view of para 15 of judgment of the Hon'ble Supreme Court in case of **Sarla Verma (supra),** dependency of the claimant on the deceased is not established.

Learned counsel for the respondent/claimant has also not been able to dispute that as per judgment of the Hon'ble Supreme Court in **Sarla Verma** (supra) future prospects @ 40% ought to have been granted in view of the fact that the deceased was 38 years old at the time of his death as per his Post Mortem Report and was a labourer and therefore, self-employed.

Learned counsel for the claimant/respondent no.1 submits that as per judgment of the Hon'ble Supreme Court in **Reliance General Insurance Company Limited v Shalu Sharma and othes (SC) 2018 Law Today Live Doc Id # 10123=2018 (1) L.A.R.290**, the amount already released to the claimant cannot be recovered.

Learned counsel for the appellant Insurance Company is unable to dispute this position in law.

In this view of the matter, it is directed that the amount of compensation already released to the claimant/respondent no.1 will not be recovered. However, in view of the discussion above, the Award to the extent of remaining 50% unreleased amount of compensation is set aside, and present appeal stands partly allowed in the above terms.

Application(s), if any, also stand disposed of.

(Nidhi Gupta)
Judge

22.02.2023
Joshi

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**