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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-8666-2015 (O&M)
Date of decision : 21.02.2024

Cholamandalam Ms General Insurance Co Ltd ... Appellant(s)

Versus

Pooja Devi & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.
Mr. Parmod Kumar, Advocate for respondent Nos.1 to 6.
Mr. Abhinav Singla, Advocate for
Mr. Chanderhas Yadav, Advocate for respondent No.10.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the appellant-insurance company aggrieved by the award dated 28.08.2015 passed by the Motor Accident Claims Tribunal, Narnaul.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.
3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5,000/-
2	Deduction 1/4 th	[Rs.5,000-1,250] = Rs.3,750/-
3	Annual Income	[Rs.3,750x12] = Rs.45,000/-
4	Multiplier - 17	[Rs.45,000x17] = Rs.7,65,000/-
5	Loss of consortium	Rs.1,00,000/-
6	Funeral expenses	Rs.25,000/-
7	Loss of love and affection	[Rs.50,000x5] = Rs.2,50,000/-
8	Loss of estate	Rs.5,000/-
9	Total Compensation	Rs.11,45,000/-
	Interest	9%

4. Learned counsel for the appellant-insurance company has contended that the amount awarded towards conventional heads, loss of consortium as well as towards love and affection is on the higher side and is not in consonance with the law laid down by the Hon’ble Supreme Court in the cases of **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]**. The learned counsel has further contended that 50% liability has been fastened on the appellant-insurance company, however, the said liability ought not to have been fastened on the appellant-insurance company inasmuch as the permit was not valid.

5. *Per contra*, the learned counsel for respondent Nos.1 to

6/claimants has contended that this is a case where the amount of compensation would have to be reworked inasmuch as no addition has been made towards future prospects which ought to have been 40% as per the law laid down in the case of **Pranay Sethi** (supra). It is further the contention of the learned counsel that the amount awarded towards conventional heads, loss of consortium as well as towards love and affection is on the lower side keeping in view the fact that there are six claimants in the present case i.e. wife, four minor children and mother of the deceased. The learned counsel for respondent Nos.1 to 6/claimants has further contended that even though any cross-objection or an appeal has not been preferred by the respondent Nos.1 to 6/claimants, however, as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908, the Court has power to pass an order notwithstanding that an appeal or cross-objection has not been filed by the claimants/respondents.

6. I have heard the learned counsel for the parties.

7. In the present case, initially the issue of the offending vehicle not having a valid permit was raised, however, during the pendency of the appeal the permit has been verified by the appellant-insurance company. The argument raised by the learned counsel for the appellant-insurance company challenging the 50% liability fastened on the appellant-insurance company deserves to be rejected inasmuch as the only ground of challenge was that there was no valid permit and hence 50% liability could not have been fastened on the appellant-insurance company, however, during the pendency

of the present appeal the permit itself has been verified and hence the present ground does not survive.

8. It is trite that as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 the Court has power to pass an order notwithstanding that the claimants/respondents have not preferred any cross-objection or appeal. In view thereof, keeping in view the fact that no addition has been made towards future prospects as well as the amounts awarded towards conventional heads and under the head 'loss of consortium' is not as per the law laid down by the Hon'ble Supreme Court, the amount of compensation needs to be reworked out.

9. In the present case the Tribunal has though rightly assessed the income of the deceased as Rs.5,000/- per month and also correctly applied a multiplier of '17' as well as deduction of $1/4^{\text{th}}$, however, no addition has been made towards future prospects and hence as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is made towards future prospects. Further, the amount awarded under the conventional heads as well as under the head 'loss of consortium' is not as per the law laid down by the Hon'ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra) and hence, the claimant-appellants would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the

claimant-appellants (wife, four children and mother of the deceased) would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.5,000/-
2	Annual Income	[Rs.5,000x12] = Rs.60,000/-
3	Deduction 1/4 th	[Rs.60,000-15,000] = Rs.45,000/-
4	Future Prospects - 40%	[Rs.45,000+18,000] = Rs.63,000/-
5	Multiplier - 17	[Rs.63,000x17] = Rs.10,71,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium	
	(i) Parental	[Rs.48,000/-x4] = Rs.1,92,000/-
	(ii) Filial	[Rs.48,000/-x1] = Rs.48,000/-
	(iii) Spousal	Rs.48,000/-
		Total Rs.2,88,000/-
	Total Compensation	Rs.13,95,000/-

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 9% per annum from the date of filing of the claim petition till the realization of the entire amount. The amount shall be apportioned between the respondent Nos.1 to 6/claimants as directed by the Tribunal

10. In view of the above discussion, the present appeal is disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

21.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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