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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8011-2017 (O&M)
XOBJC-139-2019 (O&M)
Date of decision : 28.02.2024

Cholamandlam MS General Insurance Co. Ltd. ... Appellant(s)

Versus

Gurpreet Kaur & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Ish Karan Singh Chhabra, Advocate for
Mr. ADS Sukhija, Advocate
for respondent Nos.1 to 3/cross-objectors.

ALKA SARIN, J. (ORAL)

CM-26465-CII-2017

This is an application for condonation of delay of 38 days in filing the appeal.

For the reasons stated in the application, delay of 38 days in filing the appeal is condoned. CM stands disposed off.

CM-14974-CII-2019

This is an application for condonation of delay of 479 days in filing the cross-objections.

For the reasons stated in the application, delay of 479 days in filing the cross-objections is condoned. CM stands disposed off.

FAO-8011-2017 AND XOBJC-139-2019

1. The present appeal has been preferred by the appellant-insurance company against the award dated 29.04.2017 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib. Cross-objections (**XOBJC-139-2019**) have also been preferred by the claimant-respondent Nos.1 to 3 for enhancement of compensation.

2. Brief facts relevant to the present *lis* are that on 03.03.2014 Jagtar Singh (since deceased) alongwith his friend Karamjit Singh was heading from Khamanon towards village Chuhar Majra on a motorcycle bearing registration No.PB-12J-7827. Rider of the motorcycle was Karamjit Singh and Jagtar Singh was riding as a pillion rider. Another motorcycle driven by Harjinder Singh, brother of the deceased, was following them. At around 9.15 PM when they reached within the limits of Khamanon Khurd, a Bolero Jeep bearing registration No.PB-23K-4276 came from the opposite side from village Badesh Kalan allegedly driven by Mohinder Singh (respondent No.4 herein) in a negligent manner and at a high speed and struck the motorcycle, as a result of which both Karamjit Singh and Jagtar Singh received grievous injuries. Both the injured eventually succumbed to their injures. A claim petition was filed by the claimants (wife and parents of the deceased Jagtar Singh) who averred that the deceased was working as a conductor in a private bus owned by New Patiala Bus Service and also running dairy farming business and his cumulative income was Rs.20,000/- per month. The claim petition was contested by the owner and driver of the

vehicle as well as the insurance company. The Tribunal on the basis of the evidence on the record awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.20,000/-
2	Annual Income	[Rs.20,000x12] = Rs.2,40,000/-
3	Deduction 1/3rd	[Rs.2,40,000-80,000] = Rs.1,60,000/-
4	Future Prospects 30%	[Rs.1,60,000+48,000] = Rs.2,08,000/-
5	Multiplier - 18	[Rs.2,08,000x18] = Rs.37,44,000/-
6	Loss of estate	Rs.10,000/-
7	Funeral expenses	Rs.25,000/-
8	Love and affection	Rs.1,00,000/-
	Total Compensation	**Rs.38,79,000/-**

3. Aggrieved by the same the present appeal (**FAO-8011-2017**) has been preferred by the appellant-insurance company and cross-objections (**XOBJC-139-2019**) have been preferred by the claimant-respondent Nos.1 to 3/cross-objectors.

4. Learned counsel for the appellant-insurance company would contend that the income of the deceased was assessed as Rs.20,000/- though there was no evidence on the record qua the same. It is further the contention of the appellant-insurance company that qua the income from farming, absolutely no evidence was produced on the record except for the statement of the wife who stepped into the witness box as CW-1. It is further the contention of the learned counsel for the appellant-insurance company that no document was produced by CW3-Gurinder Singh, Manager of the New Patiala Bus Service to prove that the deceased was working as a conductor

and was earning Rs.10,000/- per month. Learned counsel for the appellant-insurance company has further contended that it was a clear case of contributory negligence as it was head on collision and hence only 50% of the compensation would be payable

5. *Per contra* the learned counsel for respondent No.1 to 3/cross-objectors has contended that the income of the deceased has rightly been assessed by the Tribunal. It is further the contention of the learned counsel that though the multiplier '18' as well as deduction of 1/3rd has rightly been applied, however, the Tribunal has wrongly awarded 30% future prospects whereas it ought to have been 40%. It is further the contention of the learned counsel that the amount awarded under the conventional heads as well as under the head 'loss of consortium' is also not in accordance with the law laid down by the Hon'ble Supreme Court. In support of his contentions the learned counsel has relied upon the judgments of the Hon'ble Supreme Court 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]**. Learned counsel for respondent Nos.1 to 3/cross-objectors has further contended that the eye-witness who stepped into the witness box as PW2 had clearly stated that Bolero Jeep was coming on the wrong side of the road and the jeep hit the motorcycle and hence it was not a case of contributory negligence.

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

7. Dealing with the argument of the learned counsel for the appellant-insurance company qua contributory negligence, first the eye-witness PW2-Harjinder Singh who was following the deceased on the motorcycle has clearly stated that the Bolero Jeep was coming from the wrong side of the road. There is no evidence led by the appellant-insurance company to the contrary. Infact, despite a lengthy cross-examination, nothing could be elicited from the said witness. There is nothing on the record to reach a conclusion that this was a case of contributory negligence. The argument is hence rejected. The argument of the learned counsel for the appellant-insurance company that there was no proof regarding the deceased working as a conductor deserves to be rejected in view of the fact that Gurinder Singh, Manager of the New Patiala Bus Service had stepped into the witness box as CW3 and clearly stated that the deceased was working as a conductor with the New Patiala Bus Service from 09.05.2013 till his death and was drawing a lump-sum salary of Rs.10,000/- per month and he had also produced on record the identity card of the deceased as Ex.CW3/C. There is no reason to disbelieve the said witness. However, since there is no evidence on the record except for the statement of the wife that the deceased was earning Rs.10,000/- per month from farming and other sources, the argument of the learned counsel for the appellant-insurance company is accepted to that extent. Accordingly, the income of the deceased is assessed as Rs.10,000/- per month. In the present case, though deduction of 1/3rd as well as multiplier of '18' has rightly been applied, however, the Tribunal has

awarded 30% future prospects whereas it ought to have been 40% as per the law laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra). Further, the amount awarded under the conventional heads and 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 claimants respondent Nos.1 to 3/cross-objectors 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 they would also be entitled to Rs.48,000/- each (Rs.40,000+20% increase) towards loss of consortium.

8. Since the compensation is being re-worked, the penal interest awarded is set aside, the compensation amount shall carry interest @ 7.5% per annum from the date of filing of the claim petition till the realization of the entire amount.

9. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.10,000/-
2	Annual Income	[Rs.10,000x12] = Rs.1,20,000/-
3	Deduction 1/3rd	[Rs.1,20,000-40,000] = Rs.80,000/-
4	Future Prospects - 40%	[Rs.80,000+32,000] = Rs.1,12,000/-
5	Multiplier - 18	[Rs.1,12,000x18] = Rs.20,16,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial (ii) Spousal	 [Rs.48,000/-x2] = Rs.96,000/- Rs.48,000/- Total Rs.1,44,000/-
	Total Compensation	**Rs.21,96,000/-**
	Interest	**7.5%**

10. In view of the above discussion, the present appeal is allowed and the cross-objections are partly allowed. The award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

28.02.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

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