(2019) 09 SHI CK 0088

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order(MVA) No. 410 Of 2014

Bharti AXA General Insurance Company Limited — APPELLANT

Vs

Sushila And Others — RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173
Motor Vehicles Act, 1988 — Order 41 Rule 33

Citation : (2019) 09 SHI CK 0088

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Chandan Goel, Sanjeev Bhushan, Rajesh Kumar Arvind Sharma

Final Decision : Partly Allowed

Judgement

Sandeep Sharma, J

Instant appeal under S.173 of the Motor Vehicles Act (hereinafter, 'Act') lays challenge to Award dated 2.1.2014 passed by learned Motor Accident Claims Tribunal-II, Solan, District Solan, Himachal Pradesh in M.A.C. Petition No. 30-S/2 of 2011, whereby learned Tribunal below, while accepting the claim petition under S.166 of the Act having been filed by respondents Nos. 1 to 4-claimants (hereinafter, 'claimants'), proceeded to award a sum of Rs.10,80,000/- as compensation and Rs.25,000/- on account of funeral charges alongwith interest at the rate of 9% per annum from the date of institution of the petition till payment.

2. Precisely, the facts of the case as emerge from the record are that the claimants filed a petition under S.166 of the Act, praying therein for compensation to the tune of Rs.20.00 Lakh from the appellant-Insurance Company and respondent No. 5, jointly and severally on account of death of Manmohan Sharma alias Bunty. Allegedly on 27.9.2011, at about 6.30 am, Manmohan Sharma, was going towards Saproon from Sabzi Mandi, Solan. In the

meantime, a Truck bearing registration No. HP-12C-9657, owned and being driven by respondent No.2, came in a high speed and hit Manmohan Sharma, who died on the spot due to the injuries sustained by him. FIR No. 231 of 2011 under Ss. 279, 338, 201 and 304A IPC was registered against respondent No.5 at Police Station, Solan, Himachal Pradesh. Claimants claimed that the deceased was a brilliant and intelligent ITI diploma holder in electronics and had done short term courses like fitting and soldering, basic computer, digital electronics, basic measuring instruments, six months course of Module Inverter, voltage stabilizer and industrial drives, advance module repair and maintenance electronics test equipments and was a good electronics technician. Claimants further averred that the deceased was earning Rs.5,000/- per month by doing private electrical work and besides that, deceased was also earning Rs.80,000/- per annum from agriculture work.

3. Respondent No.5 as well as appellant-Insurance Company refuted the aforesaid claim by way of separate replies. Respondent No. 5 being owner and driver of the offending vehicle specifically denied any rashness or negligence on his part, while driving the vehicle but both the respondents categorically admitted the factum with regard to registration of FIR at Police Station Sadar, Solan, against respondent No.5 with regard to the accident in question.

4. Appellant-Insurance Company and respondent No.5 also denied that the claimants were dependent upon the deceased. They also denied the claim of the claimants with regard to educational qualifications of the deceased or his occupation as a private engineer and commission agent. Appellant-Insurance Company also raised objection with regard to possession of valid driving licence by respondent No. 1 as also flouting of terms and conditions of the insurance policy and claimed that it is not liable to pay any compensation on behalf of respondent No.5.

5. Learned Tribunal below, on the basis of the pleadings adduced on record by the respective parties, framed following issues on 4.1.2016::

"Issue No. 1 Whether Manmohan Sharma @ Bunty died in motor vehicle accident which took place near Bye Pass Kather, Solan on 27.9.2011 at about 6:30 a.m. due to rash and negligent driving of truck No. HP-12C-9567 being driven by respondent No. 1? OPP

Issue No. 2 If issue No.1 is proved in affirmative whether the petitioners are entitled for the grant of compensation, if so and to what amount and from which of the respondent? OPP.

Issue No. 3 Whether the vehicle involved in the accident was not insured with respondent No.2 at the time of accident? OPR-2.

Issue No.4 Whether the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident? OPR-2"

6. Subsequently, learned Tribunal below, vide Award dated 2.1.2014, held the

claimants entitled to a sum of

Rs/-10,80,000/ - as compensation plus Rs.25,000/- as funeral charges alongwith interest at the rate of 9% per annum from the date of petition till realisation of the whole amount. Being aggrieved and dissatisfied with the aforesaid Award passed by learned Tribunal below, the appellant-Insurance Company has approached this Court in the instant proceedings, praying therein to set aside the Award.

7. Having heard learned counsel for the parties and perused the material available on record, vis-à-vis reasoning assigned by learned Tribunal below while allowing claim petition, this Court finds no force in the argument of learned counsel for the appellant-Insurance Company that learned Tribunal below has failed to appreciate the evidence in its right perspective while returning findings qua issues Nos. 1 to 4. This Court finds no force in the argument of learned counsel for the appellant-Insurance Company that the claimants were not able to prove that at the time of accident, deceased was working and earning, rather, evidence adduced on record by the claimants clearly proves that the deceased was earning Rs.5,000/- per month from his profession as Electronic Technician. Statements having been made by respondents No. 2 and 5 clearly reveal that the deceased apart from rendering his services as an Electronic Technician was also earning handsomely, while rendering his services as a commission agent.

8. Having carefully perused the evidence led on record by claimants qua income of the deceased at the time of alleged accident, this Court finds no illegality or infirmity in the award passed by learned Tribunal below, whereby it took average monthly income of deceased as Rs.5,000/-. However, having carefully perused recent law laid down by Hon'ble Apex Court in National Insurance Company Limited vs. Pranay Sethi and others, AIR 2017 SC 5157, this court finds force in the argument of learned counsel for the appellant-Insurance Company that since the deceased was self-employed, addition of 40% on account of future prospects could have been made to the proved income of the deceased, instead of 50%. Similarly, this Court finds that only a sum of Rs.15,000/- could have been awarded by learned Tribunal below on account of funeral expenses, whereas, learned Tribunal below has awarded Rs.25,000/- under the aforesaid head.

9. At this stage, it would be profitable to reproduce following paragraphs of aforesaid judgment herein below:

"47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided. 48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In Santosh Devi (supra), the two-Judge Bench followed the traditional method and granted Rs/- 5,000/- for transportation of the body, Rs/- 10,000/- as funeral expenses and Rs/- 10,000/- as regards the loss of consortium. In Sarla Verma, the Court granted Rs/- 5,000/- under the head of loss of estate, Rs/- 5,000/-towards funeral expenses and Rs/- 10,000/- towards loss of Consortium. In Rajesh, the Court granted Rs/- 1,00,000/- towards loss of consortium and Rs/- 25,000/- towards funeral expenses. It also granted Rs/- 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socioeconomic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in Santosh Devi (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-"17. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of selfemployed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs/- 15,000/-, Rs/- 40,000/- and Rs/- 15,000/-respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

10. As per judgment (supra), only 40% increase to actual income on account of future prospects ought to have been added instead of 50%. However, so far multiplier is concerned, same has rightly been applied by learned Tribunal below, keeping the age of the deceased, which was above 19 years. In view of the law laid down in Pranay Sethi (Supra), loss of dependency /compensation ought to have been calculated in the following manner:

Average monthly income Rs.5,000/-

Deduction towards self maintenance @ 5,000x50/100= 2500

50%

Net income after deduction = Rs.2500

Addition of 40% on account of future prospects 2500x 40/100=1000

Net income after adding 40% =Rs.3500

Annual income 3500x 12 =42000

Total loss of dependency after applying multiplier of 18 42000x 18= 7,56,000/-

11. Similarly, learned Tribunal below ought to have awarded a sum of Rs.15,000/- on account of funeral expenses in terms of law laid down by Hon'ble Apex Court in Pranay Sethi (supra), as such, amount awarded on account of funeral expenses is liable to be modified to Rs.15,000/-.

12. Learned counsel for the claimants has raised another issue i.e. no amount has been granted under the head of loss of estate and as such this Court also deems it fit to grant an amount of Rs/-15,000/- under the head of 'loss of estate'. Otherwise also, the Hon'ble Apex Court in Ranjana Prakash and others vs. Divisional Manager and another (2011) 14 SCC 639, has held that amount of compensation can be enhanced by an appellate court, while exercising powers under Order 41 Rule 33 CPC. It would be profitable to reproduce following para of the judgment herein:-

"Order 41 Rule 33 CPC enables an appellate court to pass any order which ought to have been passed by the trial court and to make such further or other order as the case may require, even if the respondent had not filed any appeal or cross-objections. This power is entrusted to the appellate court to enable it to do complete justice between the parties. Order 41 Rule 33 CPC can be pressed into service to make the award more effective or maintain the award on other grounds or to make the other parties to litigation to share the benefits or the liability, but cannot be invoked to get a larger or higher relief. For example, where the claimants seek compensation against the owner and the insurer of the vehicle and the tribunal makes the award only against the owner, on an appeal by the owner challenging the quantum, the appellate court can make the insurer jointly and severally liable to pay the compensation, alongwith the owner, even though the claimants had not challenged the non-grant of relief against the insurer."

13. Consequently, in view of the modifications made herein above, claimants are held entitled to following amounts under various heads:

1. Loss of dependency /compensation 7,56,000

2. Loss of estate 15,000

3. Funeral charges 15,000

Total 7,86,000

14. This Court however does not see any reason to interfere with the rate of interest awarded on the amount of compensation and as such, same is upheld. Apportionment amongst the claimants shall remain as has been done by learned Tribunal below.

15. Consequently, in view of detailed discussion made herein above and law laid down by the Hon'ble Apex Court, present appeal is partly allowed and Award passed by learned Tribunal below is modified to the above extent only.

Pending applications, if any, are disposed of. Interim directions, if any, are vacated.

