(2019) 05 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 7500 Of 2016 (O&M), Cross Objection No. 38-CII Of 2017

Bharti Axa General Insurance Company Ltd. APPELLANT

Vs

Surender And Others RESPONDENT

Date of Decision : 08-05-2019

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 05 P&H CK 0068

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Rajbir Singh, Sanjeev Goyal, S.N. Pillania, Sandeep Thakan, Subhash Rana

Final Decision : Disposed Off

Judgement

The award dated 18.03.2016 passed by the Motor Accident Claims Tribunal, Jind (for brevity 'the Tribunal') in MACT Case No.41 of 27.03.2014 has been assailed in appeal by the insurer of trolla bearing registration No. HR-55-P-9020 (hereinafter referred to as "offending vehicle").

The claimants have filed the cross-objections seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The grievance raised in the appeal filed by the insurer is that the claimant is an elder brother of the deceased. He is having his own family and was not dependant upon the deceased, yet, the Tribunal awarded loss of dependency also.

In the cross-objections filed by the claimant, the grievance is that the compensation awarded under Section 166 of the Act needs to be enhanced.

The factum of the accident is not disputed by the parties. A motor vehicular accident took place 26.11.2013. The accident proved fatal for Jitender, aged 27 years.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and on appreciating the evidence adduced held that the accident was caused due to rash and negligent driving of the offending vehicle. The driver, owner and insurer of the offending vehicle were held jointly and severally liable to pay compensation.

In the claim petition it was pleaded that the deceased was 27 years of age and was self-employed and also doing the agricultural work. His annual earnings were claimed to be Rs.2,00,000/- . The claimant failed to prove occupation and monthly earning of the deceased. The Tribunal assessed the monthly earning of the deceased as Rs.6000/-; 1/2 deduction for self-expenses was made and multiplier of '18' was applied. The Tribunal awarded a sum of Rs.7,28,000/- alongwith interest @9% per annum. The amount awarded included Rs.50,000/- for loss of love and affection, Rs.5000/-for loss of estate and Rs.25,000/- for funeral expenses.

Before dealing with the quantum of compensation, the issue which requires consideration is issue No.2 framed by the Tribunal, which is reproduced below:

"2. If issue No.1 is proved, whether the petitioner is entitled to any compensation and if so, to what extent and from whom? OPP"

The Tribunal while deciding the issue No.2 has merely relied upon a bald statement made by the claimant that he was dependant upon the income of the deceased. There was no evidence adduced with regard to the fact that the claimants were dependant upon the deceased.

The Supreme Court in Sarla Verma and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 21; has held as under:

"15. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

('emphasis applied')

Without expressing any opinion on the merits of the case, the matter is remitted back to the Tribunal to decide the issue No.2 afresh after providing opportunity to the parties and thereafter, quantify the compensation in accordance with law.

The parties are directed to appear before the Tribunal on 11.07.2019.

The present appeal as well as cross-objections are disposed of, accordingly.

