(2016) 10 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : FAO (MVA) No. 27 of 2012

ICICI Lombard General Insurance Company APPELLANT

Vs

Smt. Suman Devi RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2016) AAC 2542

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Ajay Sharma, Advocate, for the Respondent No. 5; Mr. Jagdish Thakur, Advocate, for the Appellant; Mr. Vivek Darhel, proxy, Advocate, for the Respondent Nos. 1 to 4

Final Decision : Allowed

Judgement

Mr. Mansoor Ahmad Mir, C.J. (Oral)—Subject matter of this appeal is the judgment and award dated 30.10.2011, passed by the Motor Accident Claims Tribunal, Shimla, H.P. hereinafter referred to as "the Tribunal", for short, in MAC Petition No.26-S/2 of 2008, titled Smt. Suman Devi and others v. Sh. Davinder Singh and others, whereby compensation to the tune of Rs.12,96,000/- along with interest @ 8% per annum with costs assessed at Rs.10,000/- came to be awarded in favour of the claimants and insurer was saddled with the liability, for short "the impugned award", on the grounds taken in the memo of appeal.

2. Claimants, driver and owner have not questioned the impugned award on any ground, thus it has attained the finality, so far as it relates to them.

3. The insurer has questioned the impugned award on the grounds taken in the memo of appeal.

4. The learned counsel for the insurer/appellant argued that the Tribunal has fallen in an error in assessing the income of the deceased and has wrongly awarded the interest. Thus, the entire dispute revolves around issue No. (ii). It is

apt to reproduce issue No. (ii) herein.

"(i) If issue No. (i) is proved in affirmative, to what amount of compensation and from whom are the petitioners entitled to? OPP."

5. The findings on other issues are not in dispute. Accordingly, the findings returned on other issues are upheld.

6. The question is-whether the amount awarded is adequate.

7. Though the claimants have claimed that the deceased was earning Rs.12000/- per month but there was no evidence except the bald statement of claimant No. 1 Smt. Suman Devi that the deceased was a builder and has been in receipt of income of Rs.15-20 lacs per annum from all sources.

8. Keeping all the factors in view, by a guess work, it can safely be held that the monthly income of the deceased was not less than Rs.8000/- per month. The claimants are four in numbers. The Tribunal has wrongly deducted ?rd towards the personal expenses of the deceased but ?th was to be deducted towards his personal expenses, in view of the 2nd Schedule attached to the Act, read with Sarla Verma and others v. Delhi Transport Corporation and another reported in AIR 2009 SC 3104 and upheld in Reshma Kumari and others v. Madan Mohan and another, reported in 2013 AIR SCW 3120.

9. Accordingly, ?th is deducted towards the personal expenses of the deceased and source of dependency is assessed at Rs.6000/- per month. The deceased was 40 years of age at the time of accident and the multiplier applicable was "14" in view of Sarla Verma''s case supra. Having said so, multiplier of "14" is applied instead of "12" as applied by the Tribunal. Thus, the claimants have lost source of dependency to the tune of Rs.6000/- x 14 x 12 = Rs.10,08,000/-.

10. The Tribunal has fallen in an error in not awarding the compensation under the four heads. Thus, the claimants are also held entitled to compensation under the four head as follows.

(i)

Loss of love and affection

Rs. 10,000/-

(ii)

Loss of estate

Rs. 10,000/-

(iii)

Funeral expenses

Rs. 10,000/-

(iv)

Loss of consortium

Rs. 10,000/-

Total

Rs. 40,000/-

11. The Tribunal has awarded interest @ 8% per annum. However, interest was to be awarded at rate of 7.5% per annum, for the following reasons.

12. It is a beaten law of the land that the rate of interest should be awarded as per the prevailing rates, in view of the judgments rendered by the Apex Court in cases titled as United India Insurance Co. Ltd. and others v. Patricia Jean Mahajan and others, reported in (2002) 6 SCC 281; Satosh Devi v. National Insurance Company Ltd. and others, reported in 2012 AIR SCW 2892; Amrit Bhanu Shali and others v. National Insurance Company Limited and others reported in (2012) 11 SCC 738; Smt. Savita v. Binder Singh & others, reported in 2014, AIR SCW 2053; Kalpanaraj & others v. Tamil Nadu State Transport Corpn., reported in 2014 AIR SCW 2982; Amresh Kumari v. Niranjan Lal Jagdish Pd. Jain and others, reported in (2015) 4 SCC 433, and Mohinder Kaur and others v. Hira Nand Sindhi (Ghoriwala) and another, reported in (2015) 4 SCC 434, and discussed by this Court in a batch of FAOs, FAO No. 256 of 2010, titled as Oriental Insurance Company v. Smt. Indiro and others, being the lead case, decided on 19.06.2015.

13. Accordingly, interest @7.5% per annum is awarded from the date of claim petition till realisation of the amount.

14. The claimants are awarded compensation in all to the tune of Rs.10,08,000+Rs.40,000= Rs.10,48,000/- along with interest @7.5% from the date of claim petition till its realization.

15. Viewed thus, the appeal is allowed and the impugned award is modified, as indicated herein above.

16. The Registry is directed to release the amount in favour of the claimants, strictly in terms of the conditions contained in the impugned award, through payees'' cheque account, or by depositing the same in his bank account, after proper verification. Excess amount, if any, be refunded to the insurance company through payees'' cheque account.

17. Send down the record forthwith, after placing a copy of this judgment.