
(2019) 05 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 9 Of 2019

ICICI Lombard General Insurance Company Ltd.

APPELLANT

Vs

Kala Devi And Others

RESPONDENT

Date of Decision : 30-05-2019

Acts Referred:

Citation : (2019) 05 SHI CK 0005

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Jagdish Thakur, J.L. Bhardwaj, Raj Kumar Negi

Final Decision : Partly Allowed

Judgement

Sureshwar Thakur, J

1. The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, wherethrough, it, casts, a, challenge, upon, the award pronounced by the learned Motor Accident Claims Tribunal-II, Kullu, District Kullu, H.P., upon, Claim Petition No. 54 of 2016, (i) whereunder compensation amount embodied in a sum of Rs.12,60,000/- alongwith interest accrued thereon, at the rate of 9% per annum, and, commencing from, the date of petition till realization thereof, stood, assessed, vis-a-vis, claimants No.1 to 6, (ii) and, the apposite indemnificatory liability thereof, was, fastened upon the insurer/appellant herein.

2. The afore claim petition, whereon, the impugned award stood rendered, was a sequel, of, occurrence of demise of one Chande Ram, in, a motor vehicle accident, involving the offending vehicle, driven, at the relevant time, by its deceased driver, one Khursheed.

3. The learned counsel appearing, for the insurer/appellant herein, does not contest, the validity of affirmative findings recorded, upon, the issue appertaining to the relevant mishap, being a sequel of rash, and, negligent manner of driving of the offending vehicle, by its deceased driver, one Khursheed.

However, the learned counsel appearing, for, the appellant/insurer, of, the offending vehicle concerned, has, contended with much vigour (a) that though, the learned tribunal had aptly dispelled the vigour, of, the evidence adduced, vis-a-vis, the pleaded factum of the deceased, from his, avocation as an agriculturist, (b) and, as a shepherd, hence, rearing an income of Rs.10,000/- therefrom, (c) yet it proceeded to commit, a, gross error, in, its thereafter proceeding, to, compute his per diem daily wages, in a sum of Rs.500/-, (d) and, thereafter he contends that it also committed, a sequencing error, in computing his income at Rs.15,000/-per mensem. He further contends, that, the further computation of sums, of, annual dependency, of, his dependents, upon, his afore income, and, the resultant thereto quantification, of, compensation, vis-a-vis, the respondents/claimants, is also ridden with a gross error. In succoring, the afore submissions, he has placed reliance, upon, the factum that (e) with the government of Himachal Pradesh, hence, notifying the minimum wages drawable, by various categories, of workmen, and, the afore notification, coming into force with effect from May 1, 2015, (f) and, whereunder the per diem wages of a "mazdoor" is computed in a sum, of Rs.180/-, (g) thereupon, when in contemporaneity thereof, hence, the accident occurred on 4.11.2015, thereupon, rather judicial notice, is, enjoined to be taken by this court, vis-a-vis, the afore notification, and, he proceeds to contend that in consonance therewith, rather sweeping reduction(s), in the compensation amount, as, determined by the learned tribunal, is also, required to be made by this Court.

4. Though, the counsel for the claimants/respondents, contests the vigour of the afore submission, and, has rested his submission, qua de hors the afore notification, rather with evidence existing, on record, in exemplification, vis-a-vis, the pleaded income, of the deceased Chande Ram, hence being reared, from, his avocation as a shepherd, and, as an agriculturist, rather standing borne in a sum of Rs.20,000/- per mensem, thereupon, the afore per mensem income of the deceased, is, enjoined to be meted credence.

5. However, for the reasons to be recorded hereinafter, this Court accepts the submission made, by the learned counsel for the insurer/appellant herein, and, discountenances, the contention contra therewith, as, addressed before this Court, by the learned counsel for the claimants/respondents, (a) for accepting the submission addressed before this Court, by the learned counsel for the respondents/claimants, there was an enjoined necessity, vis-a-vis, existence on record, of, documentary evidence, vis-a-vis, the landholdings, of, the deceased, wherefrom, it was alone gaugeable qua his therefrom, hence, drawing an income bearing commensuration with the afore pleaded income, (b) and, also grazing permits issued, vis-a-vis, deceased with explicit and specific enumeration therein, vis-a-vis, the number, of, livestock maintained by the deceased, were/ was required hence to be hence adduced into evidence. However, the afore evidence is amiss hereat. Therefore, this Court is constrained to reject the afore submission addressed before this Court, by the learned counsel appearing, for the respondents/claimants. Contrarily, with the afore notification rather not being

contested to emanate, from, the records maintained by the department concerned, and, when hence judicial notice is to be meted thereto, (i) thereupon, in consonance therewith, and, when in contemporaneity inter se its issuance, vis-a-vis, the ill-fated accident occurring, rather the per diem wages of a daily waged causal labour, rather stand echoed therein, to be borne in a sum of Rs.180/-, (ii) thereupon, the computation of per diem wages of the deceased, by the learned tribunal, in a sum of Rs.500/- per day, is, surmisal and imaginative, besides, is in departure of the afore notification, thereupon, this Court proceeds, to compute the per diem wages of the deceased, in a sum of Rs.180/-.

6. Though, the number of claimants arrayed, in the afore capacity in the claim petition hence are nine. However, (a) with the learned tribunal in the impugned award, upon, meteing credence to the testification rendered, by his surviving widow, arrayed as co-claimant No.1, with voicings therein, rather qua co-claimants No.7 to 9, being married prior to the occurrence, of, demise of the afore deceased Chande Ram, in the ill-fated mishap, (b) and, thereupon, it taking the number of dependents, upon, the income of the afore deceased being six, and, when the apt legal therewith legal expostulation, makes postulation(s) qua, upon, the afore per diem income of the deceased, hence, $\frac{1}{4}$ deduction(s) being meteable, towards, the personal expenses of the deceased, thereupon, the, afore method, employed by the learned tribunal, is creditworthy. Consequently, taking the afore per diem income of the deceased, from his avocation, as a daily wager, thereupon, his per mensem income, is calculated, in a sum of Rs.5400/-. Significantly, the number of dependents, of, the deceased, are, 6, hence, $\frac{1}{4}$ th deduction is to be visited, upon, a sum of Rs.5400/-, hence, after making, the, apt aforesaid deduction vis-a-vis Rs.5400/-, the per mensem, dependency hence comes to Rs.4050/-. In sequel whereto, the annual dependency, of the dependents, upon, the income of the deceased is computed, at $\text{Rs.}4050 \times 12 = \text{Rs.}48,600/-$. Since, the age of the accused at the time, of, the ill-fated accident was 60 years, hence, upon applying, the, apposite multiplier of 9, upon, the, afore annual dependency, the total compensation amount, is assessed in a sum of $\text{Rs.}48,600 \times 9 = \text{Rs.}4,37,400/-$ (Rs. Four lakhs, thirty seven thousand, four hundred only).

7. Lastly, the learned counsel for the aggrieved insurer has made a vehement espousal, before this Court that, the fastening of the apposite indemnificatory liability, upon, the appellant, though, being within the domain, of, the, apt expostulation of law, comprised in, a, verdict of the Hon'ble Apex Court, rendered in a case tilted as Bajaj Alliance General Insurance Company vs. Rambha Devi, and, others, (i) yet when the afore decision is referred to a larger bench, of the Hon'ble Apex Court, hence, thereupto the afore decision, as stood relied upon, by the learned tribunal for fastening, the apposite indemnificatory liability, upon, the aggrieved insurer, is unbefitting. However, the afore submission is not accepted, as till the larger Bench, of, the Hon'ble Apex Court, whereto, the afore decision is referred for adjudication, hence, makes a decision adversarial, vis-a- vis, the afore expostulation of law, as, borne rather therein,

hence thereupto, the mandate rendered in the afore decision, made by the Hon'ble Apex Court, enjoins meteing, of deference thereto. Consequently, the fastening of the apposite indemnificatory liability, hence, in consonance therewith, by the learned tribunal, upon, the insurer, of the offending vehicle, does not, suffer from any fallibility.

8. Furthermore, in consonance with the decision rendered by the Hon'ble Apex Court in a case titled as National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in 2017 ACJ 2700, the claimants are entitled for the quantification, of damages, under conventional heads, namely, loss to estate, loss of consortium, vis-a-vis, the widow of the deceased, and, funeral expenses being quantified only upto Rs.15,000/-, Rs.40,000/-, and Rs.15,000/- respectively. Accordingly, in addition to the aforesaid amount of Rs.4,37,400/-, the claimants/respondents No.1 and 6, are, entitled under conventional heads, namely, loss to estate, loss of consortium (only vis-a-vis the widow of the deceased), and, funeral expenses, sums of Rs.15,000/-, Rs.40,000/-and Rs.15,000/- respectively, as such, the total compensation to which the claimants/respondents No.1 to 6 are entitled comes to Rs.4,37,400/-+ Rs.15,000/- + Rs.40,000/- + Rs.15,000/-= Rs.5,07,400/-(Rs. Five lakhs, seven thousand, four hundred only).

9. For the foregoing reasons, the appeal filed by the insurer is partly allowed, and, the impugned award, is, in the aforesaid manner, hence modified. Accordingly, the petitioners, are, held entitled to a total compensation of Rs.5,07,400/-(Rs. Five lakhs, seven thousand, four hundred only) along with interest @ 9 % per annum, from, the date of petition till the date, of, deposit, of the compensation amount. The indemnificatory liability, vis-a-vis, compensation amount shall be of the insurer of the offending vehicle, i.e. appellant herein. The afore amount of compensation be apportioned amongst the claimants/respondents No.1 to 6 in the manner as ordered by the learned tribunal. The amount of interim compensation, if awarded, be adjusted in the aforesaid compensation amount, at the time of final payment. The shares of the minor children, shall remain invested, in FDRs, upto, the stage of theirs attaining majority. However, interest accrued thereon, shall be releasable vis-a-vis their mother, only when she explains, of, its being required, for, the upkeep and benefit of her minor children. All pending applications also stand disposed of. Records be sent back forthwith.