(2015) 05 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : X-Obj. No. 96-CII of 2014 in/and FAO No. 1990 of 2013 (O&M)

IFCO TOKIO General Insurance Co. Ltd. APPELLANT

Vs

Shashi Bala and Others RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 05 P&H CK 0058

Hon'ble Judges : Karam Chand Puri, J

Bench : Single Bench

Advocate : Nitin Mittal, Advocate for Subhash Goyal, for the Appellant; Ashwani Arora, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Karam Chand Puri, J.—Vide this common judgment, I intend to dispose of FAO No. 1990 of 2013 directed by IFFCO TOKIO General Insurance Company Limited and Cross-objections No. 96-CII of 2014 filed by respondents No. 1 to 5 titled as, "IFFCO TOKIO General Insurance Company Limited v. Shashi Bala and others", as the same have arisen out of the common Award dated 04.02.2013 passed by Ms. Shalini Singh Nagpal, Motor Accident Claims Tribunal, Chandigarh. For reference, the facts are being taken from FAO No. 1990 of 2013.

2. Briefly stated, widow- Shashi Bala, daughter- Shanky, son- Lalit Kumar, father- Satpal, married daughter- Ranjana filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation to the tune of Rs. 50 lacs in respect of death of Naresh Kumar in a motor vehicular accident.

3. The brief resume of the case is that on 30.07.2010 at about 7.00 am, deceased Naresh Kumar was going as pillion rider on motorcycle bearing registration No. HR-04-B-1975 from Barwala to Dera Bassi, being driven at fast speed and in a rash and negligent manner by Kanwar Bhan-respondent No. 1. They were being followed by Pawan Kumar and Phool chand on a separate

motorcycle. When they reached near bus stop of Bhagwanpura, at that time, their motorcycle ran over a stone, as a result of which they fell down on the road along with the motorcycle. The deceased Naresh Kumar received serious injuries whereas Kanwar Bhan received minor injuries. Naresh Kumar was taken to GMCH-32, Chandigarh where he died on 08.08.2010. The motorcycle was being driven at a fast speed and in a rash and negligent manner by Kanwar Bhan-respondent No. 1.

4. It is pleaded that the deceased was 55 years of age at the time of accident. He was JBT teacher at Government Elementary School, village Azizpur, Block Banur, Tehsil Rajpura, District Patiala. His monthly income was Rs. 35,000/-. A sum of Rs. 1,50,000/- was spent on his medical treatment and last rites. A sum of Rs. 50 lacs was claimed as compensation on account of untimely death of Naresh Kumar.

5. Respondents No. 1 and 2 opposed the claim petition by filing written statement pleading therein that respondent No. 1 was not at fault. The motorcycle bearing No. HR-04-B-1975 was driven by him at slow speed. The deceased Naresh Kumar was a pillion rider and he himself fell from the motorcycle.

6. Respondent No. 3-Insurance Company filed separate written statement taking preliminary objection regarding driving license. The factum of insurance was also denied. The dispute was made regarding income and occupation of the deceased. It was further pleaded that respondent No. 3 had been wrongly impleaded in the case.

7. No replication was filed.

8. From the pleadings of the parties, following issues were framed:--

"1) Whether the deceased Naresh Kumar died in road side accident which took place on 30.07.2010 at about 7.00 am near the bus stop of Bhagwanpura on the road leading from Barwala to Dera Bassi because of rash and negligent driving of respondent No. 1 while driving vehicle bearing registration No. HR-04-B-1975? OPP

2) If Issue No. 1 is proved in affirmative, to what amount of compensation the claimants are entitled and from whom? OPP

3) Whether the driver of offending vehicle was not holding a valid and effective driving license at the time of accident, if so, its effect? OPR

4) Relief."

9. In order to prove its case, the claimants examined Shashi Bala as PW-1, Pawan Kumar as PW-2, Ashish Kumar as PW-3, Jaswinder Singh Clerk as PW-4, HC Yash Pal as PW-5 and closed the evidence after tendering certain documents.

10. On the other hand, respondents tendered documents Exhibit R-1 to R-3 but

no oral evidence was led.

11. The learned Tribunal returned the findings on Issues No. 1 in favour of the claimants whereas Issue No. 2 was partly decided in favour of the claimants and ultimately, the claim petition was partly accepted and a sum of Rs. 30,35,210/- was granted as compensation.

12. Feeling dissatisfied with the above said Award dated 04.02.2013, the Insurance Company has directed FAO No. 1990 of 2013 for reducing the amount of compensation, whereas the claimants have directed Cross-Objections No. 96-CII of 2014 for enhancement of compensation. Since both the appeal as well as cross-objections have arisen out of the same Award and as such, the same are being disposed of with common judgment.

FAO NO. 1990 OF 2013

13. First of all the appeal preferred by the Insurance Company is being disposed of.

14. The Tribunal has taken the annual income of deceased as Rs. 4,11,164/- as per his salary certificate after deducting the income tax. 1/3rd was deducted in respect of personal expenses. The yearly dependency was calculated as Rs. 2,74,110/-. The multiplier of 11 was applied. In this manner, a sum of Rs. 30,15,210/- (2,74,110 x 11) was allowed as compensation to the claimants. Another sum of Rs. 5000/- was allowed under the head of loss of estate and Rs. 5000/- towards funeral expenses. Rs. 10,000/- was allowed in respect of consortium. In this manner, a total sum of Rs. 30,35,210/- was awarded as compensation.

15. Learned counsel for the appellant-Insurance Company has submitted that the claimants have failed to prove the factum of negligence on the part of driver of the offending vehicle. It is further submitted that Exhibit P-15 is the DDR No. 22 dated 30.07.2010 (Exhibit P-15) in which no detail of the accident has been mentioned. However, from the perusal of said DDR, it is revealed that only intimation regarding receiving telephonic message in respect of accident taken place has been recorded.

16. Learned counsel for the appellant-Insurance Company has further submitted that on 19.12.2010 i.e after about five months of the occurrence, DDR No. 27 dated 19.12.2010 (Exhibit P-16) was recorded in which it is mentioned that on account of motorcycle being struck with a stone lying on the road, the motorcyclist as well as the pillion rider received injuries. It is further submitted that in case Exhibit P-16 is taken into account, in that case, the negligence on the part of Kanwar Bhan-respondent No. 1 is not proved and on that account Insurance Company is not liable to indemnify the claim.

17. In reply to that submission, learned counsel for the claimants/cross-objectors has submitted that claimants have examined PW-2 Pawan Kumar who has categorically stated that Kanwar Bhan-respondent No. 1 was driving the

motorcycle at a fast speed and in a rash and negligent manner. His testimony goes unrebutted. Kanwar Bhan-respondent No. 1 has not come into witness box to deny the manner of accident. It is further submitted that even if the assertions made in DDR No. 27 dated 19.12.2010 are taken into account, in that case, the negligence of Kanwar Bhan-respondent No. 1 stands proved. The driver of motorcycle was required to drive the vehicle in such a manner that it does not loose control even if there is stone on the road. Kanwar Bhan-respondent No. 1 was required to take note of the stone lying on the road. The deceased was a pillion rider and as such, the claimants are entitled to claim compensation.

18. I have considered the rival submissions made by both the sides and have gone through the records of the case.

19. Learned Tribunal, after appreciating the evidence on record, reached to the conclusion that accident has taken place due to rash and negligent driving of motorcycle bearing No. HR-04-B-1975 being driven by Kanwar Bhan-respondent No. 1. Now the question arises whether the said finding requires any interference or not. The answer to that question is in negative. Pawan Kumar as witness has deposed about the manner of accident. DDR No. 22 dated 30.07.2010 make the things clear as it is mentioned in it that Naresh Kumar deceased received injuries in a motor vehicular accident. In DDR No. 27 dated 19.12.2010, it is mentioned that tyre of the motorcycle slipped on a stone and due to that the accident took place but in case the said version is taken as it is, in that case, the negligence of Kanwar Bhan-respondent No. 1 stands proved. The driver of motorcycle is required to avoid the accident. PW-2 Pawan Kumar has categorically stated that the accident was caused due to rash and negligent driving by respondent No. 1-Kanwar Bhan and the said testimony goes unrebutted. Kanwar Bhan in his written statement has taken a stand that he was not negligent but he has not appeared in the witness box to depose about the manner of accident. So, adverse inference is required to be drawn against him. So, the findings of learned Tribunal on Issue No. 1 does not call for any interference and as such, the same stands affirmed.

20. Now reverting to the quantum of compensation, the Insurance Company has made prayer for reduction, whereas, the cross-objectors have prayed for enhancement of compensation. So, both the appeal as well as the cross-objections, in respect of quantum of compensation, are being disposed of as under:--

21. Learned counsel for the Insurance Company has submitted that the service benefits have not been taken into account along with gratuity received by the widow.

22. I have considered the said submission but do not find any force in the same.

23. It is settled law that the service benefits including pension, gratuity etc. cannot be taken into account while computing the amount of compensation.

24. The next question raised by learned counsel for the appellant-Insurance Company is that the date of birth of deceased was 05.12.1955. He was likely to retire after two and a half years. So, the income of deceased as Rs. 36,667/- as per salary slip Exhibit P-12, would have been taken upto the date of his retirement. The learned Tribunal has applied the multiplier of 11, which is also on higher side. Otherwise also, as per authority Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , the multiplier applicable at the age of 56 is 9.

25. Learned counsel for the appellant-Insurance Company has further submitted that principle of split multiplier cannot be made applicable in view of authority Saraladevi Vs. Divisional Manager,Royal Sundaram Alliance Ins. Co. Ltd., (2014) AIRSCW 4993 : (2014) 9 SCALE 431 and Sri. K.R. Madhusudhan and Others Vs. The Administrative Officer and Another, (2011) ACJ 743 : AIR 2011 SC 979 : (2011) 162 PLR 487 : (2011) 2 RCR(Civil) 207 : (2011) 2 SCALE 511 : (2011) 4 SCC 689 : (2011) 2 SCC(Cri) 706 : (2011) 2 SCR 1061 : (2011) 1 TAC 874 : (2011) AIRSCW 1390 : (2011) 2 Supreme 86 .

26. Learned counsel for the claimants/cross-objectors has submitted that the Tribunal has granted the amount by relying upon Sarla Verma and others'' case (supra) which is the guiding factor. The Hon''ble Apex Court in authority Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , has held that 15% increase has to be made in respect of future prospects. It is further submitted that the amount granted in respect of loss of care and guidance and the amount granted in respect of consortium and funeral expenses is on lower side.

27. Learned counsel for the Insurance company has submitted that no amount in respect of future prospects of the deceased can be given as the deceased was a government employee aged about 55 years. To support this contention, learned counsel for the Insurance Company has relied upon Sarla Verma and others'' case (supra) and has submitted that future prospects can be granted only in case deceased is below 50 years.

28. I have considered the rival submissions made by both the parties and have gone through the record.

29. The submissions made by the Insurance Company carries weight and has to be accepted. So, no amount in respect of future prospects can be granted in case the deceased is more than 50 years as per Sarla Verma and others'' case (supra). The deceased in the present case was 55 years 7- 1/2 months old meaning thereby he has not completed the age of 56 years. He was likely to retire within 2- 1/2 years and as such, no amount in respect of future prospects

can be allowed on the facts of present case. The interest has been granted @ 7.5% per annum by the Tribunal which stands upheld.

30. The next question that arises is whether split multiplier can be made applicable, as argued by learned counsel for the Insurance Company. The answer to that question is in negative in view of Saraladevi and ors'' case (supra) and K.R. Madhusudhan and Ors'' case (supra). The principle of split multiplier in respect of government employees has been discouraged. So, the argument advanced by learned counsel for the appellant that higher amount has been awarded by the Tribunal cannot be taken into consideration.

31. The next question is whether the multiplier applicable in the present case should have been 11 or 9. The Tribunal has applied the multiplier of 11. The deceased Naresh Kumar has not completed the age of 56 years. Exactly his age was 55 years 7- 1/2 months at the time of accident, as his date of birth proved on file is 05.12.1955 and the accident has taken place on 30.07.2010. Since the deceased has not completed the age of 56 years and as such, the multiplier of 11 applied by the Tribunal does not call for any interference. Otherwise also, it is a welfare legislation and the balance always tilt in favour of the claimants.

32. Learned counsel for the parties have not challenged the factum of income of deceased as Rs. 4,40,004/- per year. It is also not disputed that deduction regarding income tax has been rightly made and the annual salary of the deceased has been rightly taken as Rs. 4,11,164/-. The deduction of 1/3rd in respect of personal expenses by the Tribunal is also not challenged by learned counsel for the claimants. Although in this case the claimants are five in number, the father of deceased is stated to be living separately and one of the claimant is married daughter and the remaining claimants comes to three, it so seems that on that account, learned counsel for the claimants have not challenged the deduction to the extent of 1/3rd in respect of personal expenses. So, amount of Rs. 30,15,210/- calculated by the Tribunal by applying the multiplier of 11 does not call for interference. However, there is scope for interference in respect of amount awarded on the head, the consortium, loss of estate, funeral expenses etc. In view of authority Rajesh and others'' case (supra), a sum of Rs. 25,000/- stands allowed in respect of last rites and transportation etc in stead of Rs. 5000/- awarded by the Tribunal. A sum of Rs. 1,00,000/- also stands allowed in respect of consortium including the loss of estate, in stead of Rs. 10,000/- allowed by the Tribunal. In this case, none of the claimants is minor and as such, the ends of justice would be met in case a sum of Rs. 50,000/- stands allowed in respect of loss of love and affection.

33. In view of the above discussion, the appeal bearing FAO No. 1990 of 2013 filed by Insurance Company is without any merit and the same stands dismissed.

34. The cross-objections No. 96-CII of 2014 filed by the claimants stands partly accepted and the claimants are held entitled to claim Rs. 1,55,000/- more in addition to the amount awarded by the Tribunal. The enhanced amount shall

carry interest @ 7.5% per annum. The enhanced amount shall be paid to the widow. The liability to pay the amount shall remain the same as ordered by the Tribunal.

35. The appeal as well as the cross-objections stand disposed of accordingly.

