
(2019) 09 P&H CK 0268

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 7095 Of 2018(O&M)

IFFCO Tokio General Insurance Company Ltd.

APPELLANT

Vs

Rajender Mantoo And Others

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166
Indian Penal Code, 1860 — Section 279, 337

Citation : (2019) 09 P&H CK 0268

Hon'ble Judges : Dr. Ravi Ranjan, J

Bench : Single Bench

Advocate : Abhimanyu Batra, Ashish Gupta

Final Decision : Allowed

Judgement

Dr. Ravi Ranjan, J

The aforesaid two appeals arise out of the Judgment and Award dated 03.08.2018 passed by the Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal') in MACT case No.8, by which the Tribunal has hold the claimants to be entitled for a compensation amount of Rs.22, 94,979/- alongwith interest @ 7.5 % per annum on the said awarded amount to be calculated from the date of filing of the claim petition till the actual realization.

FAO No.7095 of 2018 titled 'IFFCO Tokio General Insurance Company Ltd. Vs. Rajender Mantoo and others' has been preferred by the Insurance Company which has been saddled with the liability to indemnify the owner whereas FAO No.10688 of 2018 titled 'Rajender Mantoo and others Vs. Mukesh Kumar and others' has been preferred by the claimants for enhancement of the awarded compensation amount.

The claim petition was filed before the Tribunal under Section 166 of the Motor Vehicles Act 1988 (hereinafter referred to as 'M.V. Act') by the claimants, i.e., Rajender Mantoo, father, Rajni Mantoo, mother, Rani Mantoo grand-mother,

Madan Lal Mantoo, grand-father and Shubham Mantoo, brother of Ishan Mantoo(since deceased), who died in a motor vehicular accident on 12.08.2016 at around 2.00 P.M. upon which FIR No.341 dated 12.08.2016 under Sections 279/337 of Indian Penal Code was registered at Police Station Khaidki Daula, Gurugram.

Since the issues involved in both the appeals are identical in nature, both have been taken up together for consideration and this decision will dispose of both the appeals.

Short facts necessary for consideration of the lis stand enumerated as under:-

On 12.08.2016, at about 2.00 P.M., the deceased Ishan Mantoo, alongwith his friend Sanjeev Kumar was present outside the company, v.i.z., M/s Beumer India Ltd., 157, Naurangpur, Sector-78, Gurgaon for taking tea at khoka. In the meantime, the offending vehicle bearing Registration No.HR-51-S-4787 came from Naurangpur side being driven by respondent No.1 at a high speed and in a rash and negligent manner and hit the deceased. As a result thereof, the deceased fell down on the road and suffered grievous multiple injuries including serious head injuries. He was shifted to Rockland hospital, Manesar by Sanjeev Kumar where he remained admitted till the evening but his condition was serious and due to that, he was shifted to Fortis Hospital, Gurgaon, where he remained admitted from 12.08.2016 to 22.08.2016 but eventually, he succumbed to his injuries on 22.08.2016 in the late night during his treatment. His post mortem was conducted on 23.08.2016 by Dr.Yudhvir Singh, Medical Officer, General Hospital, Gurgaon. It is claimed in the claim petition that the petitioners spent more than Rs.2 lacs on his treatment, medicines and special diet of the deceased, Rs.50,000/- on his last rites and Rs.50,000/- on transportation of the dead body from Gurgaon to J&K. It is further pleaded in the claim petition, that after the accident, the driver of the offending vehicle escaped from the spot leaving the offending vehicle at the spot itself and the accident took place only due to rash and negligent driving of driver-Mukesh Kumar (respondent No.1 in the claim petition). The accident was witnessed by his friend Mr.Sanjeev Kumar and on his statement, FIR No.341 dated 12.08.2016 was registered at Police Station, Kherki Daula against the driver. It is also claimed that at the time of alleged accident, the deceased was aged about 27 years and was hale and hearty person. He was Senior Associate with M/s. Beumer India Ltd. Naurangpur, Gurgaon and was earning Rs.3,78,000/-CTC per annum and he was also being paid Rs.500/- per day in working days as his travelling allowance and Rs.750/- per day on holidays and other allowances. With these pleadings, a sum of Rs.80 lacs alongwith interest @ 15% per annum was claimed as compensation.

The sole issue which has been raised on behalf of the Insurance Company at the time of hearing of the appeal is that the Tribunal has erred in deducting only 1/3rd of the income of the deceased as an amount which he would have spending on himself. It is contended that as per the decisions of Hon'ble the Apex Court in Sarla Verma and Ors. v. Delhi Transport Corporation and Another,

2009 ACJ 1298 (SC), which has been considered and dismissed by a Constitution Bench of Hon'ble Apex Court in National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009, since the deceased was unmarried, it has to be taken that he was spending ½ of the salary on his personal expenses.

Learned counsel for the claimants in FAO No.10688 of 2018 is not in a position to controvert the same.

Accordingly, it is held that, as per the decision rendered by the Apex Court in Sarla Verma (supra), 1/3rd of the income of the deceased should have been deducted presuming that he would have spent the same upon himself.

The issue that has been raised by the claimants-appellants in FAO No. 10688 of 2018, is that the Tribunal, while assessing and calculating the income of the deceased for the purpose of assessment of annual dependency, has merely considered his basic salary whereas all the perks alongwith the basic salary would form point of the the salary for such consideration.

Per contra, learned counsel appearing for the Insurance Company has submitted that the perks which are available to the family and not personally to the deceased, can only be considered as income for the purpose of the calculation of the dependency or the annual income for the said purpose. He especially submits that conveyance allowance and special allowance, telephone reimbursement would be such amount, which are for the purpose of official use by the deceased for going to office and for the purpose of attending the office. As such, these perks are not required to be added.

This issue are no longer res-integra, as having been considered and decided by the Hon'ble Apex Court in National Insurance Company Ltd. Vs. Indira Srivastava and others, 2008(2) SCC 763, holding that the amounts which are required to be paid to the deceased by his employer by way of perks should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. However, while holding as such, the Hon'ble Supreme Court in paragraph No.15 of the aforesaid Judgement has considered its earlier decision rendered in Asha and others Vs. United Indian Insurance Co. Ltd. and another (2004 ACC 533) and has observed in that decision that perks against the head of conveyance was also added and considered for the purpose of assessing the personal income of the deceased.

In another decision rendered by Hon'ble Apex Court in Sunil Sharma and others Vs. Bachitar Singh and others, 2011(11) SCC 425, it has been held that the deductions made by the Tribunal on account of HRA, CCA and Medical Allowances have been done on an incorrect basis and those should have been taken into consideration in calculation of the income of the deceased. The Apex Court has further held that the deduction towards EPF and GIS should also not have been made while calculating the income of the deceased.

Apart from all the aforesaid decisions, there are several other decisions also in which it has been held that the perks given to the deceased would form part of the monthly income, therefore, it could not have been deducted.

Accordingly, it is held that the Tribunal has incorrectly considered only the basic salary of the deceased while considering his personal income. The salary certificate granted by the employer of the deceased, v.i.z., BEUMER GROUP has been brought on record as Ex.P7 and P8. From the salary certificate, it does not appear at all that special allowances to the tune of Rs.5,978/- were being given to the deceased only for his personal use. In fact, there is no evidence to that effect. The representatives of the company, v.i.z., Ravi Parkash, a Deputy Manager HR, has been examined as PW5. He has stated in his examination-in-chief that the annual salary of the deceased was Rs.3,78,001/- and apart from that, he was being paid site allowance of Rs.500/-per day also.

It appears that on the question being put, PW5 has answered that the special allowance, telephone reimbursement and medical reimbursement, LTA and PF contribution and gratuity are variable and not in permanent nature. However, there no suggestion was made by the Insurance Company at the time of cross-examination that those were for his personal use only. It may be a case that depending upon the rise in the basis salary, the said allowances under the said heads may vary but it does not mean that since it is variable, therefore, it would not be for the purpose of use by the family because that would definitely form part of perks of the deceased.

While saying so, he has also stated regarding PF contribution and gratuity which are variable in nature. Thus, it indicates in clear term why it has been stated by the witness that it is variable and not permanent nature. The contribution regarding PF may vary either on the basis of will of the employee or on the basis of certain percentage of the basic salary which may increase time to time. Same would be the case with Gratuity. Therefore, it has to be understood that other allowances would also be dependent upon such increased and decrease of the basic salary or other circumstances. That apart, it is nowhere stated that the medical allowance or the conveyance allowance are dependent upon submission of vouchers as it has been stated that they are permanent in nature.

Having regard to the aforesaid discussion, this Court would hold that there is nothing on record to show that special allowance or telephone reimbursement, medical reimbursement or conveyance allowance and the house rent allowance and the contribution of PF and gratuity would not form part of the perk of the deceased which would be available for his family to be used.

Learned counsel for the Insurance Company, especially for the purpose of conveyance allowance, has placed reliance upon a Division Bench Judgment of the Gujarat High Court rendered in Jasbhai Bhailalbai Patel and others Vs. Balmurbha K. Munipate Devre and others, 2015(50) R.C.R. (Civil) 398, in which the Gujarat High Court has held that the conveyance allowance in that particular

case was reimbursed on producing the vouchers and, as such, those were being paid to an employee for the purpose of his conveyance and travelling expenses from his residence to office or office to residence.

In my view, this decision would have been applicable in the present case, had it been also the case of the parties or some material available on record to show that conveyance allowance was dependent upon submission of vouchers of expenditure towards that head indicating the use of vehicle for the purpose of visiting his office from his residence or coming back to office. The PW5 has clearly stated in his testimony that the conveyance allowance permanent in nature and no suggestion has been made on the behalf of the Insurance Company that it was dependent upon production or submission of vouchers or bills. It appears from the perusal of the record that a fixed amount was being paid to the deceased against the head of conveyance allowance which can easily be used by the entire family because it has nowhere been stated by PW5 that there was embargo that such amount must be used for coming to the office from his residence or back to his residence. That apart, Ex.P8, which is a certificate granted by the employer of the deceased clearly indicates that apart from the salary and allowances, of Rs.500/- per day was being given to him as pocket allowance in addition to monthly salary under Clause X of the Travel Policy of the Company payable to any site engineer in work level one category. Since the same would be for visiting the site, that amount is not required to be included in the salary of the deceased.

Apart from above, it appears that income tax amount which would be payable by the deceased at the relevant time, would have to be deducted from the salary for the purpose of calculating his annual income. After such deduction, considering the monthly income to be Rs.31,500/-, the annual income of the deceased comes to Rs.28,944/- per month.

Learned counsel for the Insurance Company has produced a Chart showing the income tax rates for the financial year 2016-17 which would be admittedly applicable in the present case. It appears that on the annual income upto Rs.2,50,000/-, no tax was required to be paid whereas for the income above Rs.2,50,000/-, it would be 10% of the income.

In such a situation, after calculation, it appears that Rs.9,732/- was required to be paid annually against the income tax.

So far as the future prospects is concerned, in my considered view, the Tribunal has correctly added 50% of the amount as the employment of the deceased appears to be permanent in nature and was on the basis of the pay scale being given by the Company. Apart from that, both the parents of the deceased would also be entitled for filial consortium of Rs.40,000/- each as per the law laid down by the Hon'ble Apex Court in Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram and others, 2018(4) R.C.R. (Civil)

333. However, Rs.4051/- granted towards medical expenses is not being

disturbed by this Court.

As a consequence to the aforesaid discussion, the amount awarded by the Tribunal is modified to the following extent:-

Sr.No.

Heads of compensation

Amount

1

Income(salary)

Rs.31,500/- per month

2.

Deduction of

Medical

and

Rs.31,500/-

(minus) Rs.2556/-

Provident Fund from income

(Rs.1306/-

+

Rs.1250/-)=

Rs.28,944/- per month

3.

Yearly income

Rs.28,944/-

X

12=

Rs.3,47,328/-

4.

After deduction of income tax

Rs.3,47,328/- (minus) Rs.9732/-

=Rs.3,37,596/-

5.

Future prospect added as 50%

Rs.3,37,596/- + Rs.1,68,798/-

=Rs.5,06,394/-

6.

Deduction on personal expenses

Rs.5,06,394(minus)

1/2

Rs.2,53,197= Rs.2,53,197/-

7.

Total dependency after applying

Rs.2,53,197/-

X

17=

multiplier 17

Rs.43,04,349/-

8.

Funeral expenses

Rs.15,000/-

9.

Loss of estate

Rs.15,000/-

10.

Medical expenses

Rs.40,051/-

11.

Filial consortium Rs.40,000/-

Rs.80,000/-

each to both parents

Total

Rs.44,55,400/-

Enhanced

amount

of

Rs.44,55,400/-

compensation.

(minus)Rs.22,94,979/-

=21,60,421/-

The rate of interest which has been allowed by the Tribunal as 7% per annum is also increased to 9% per annum to be calculated from the date of filing of claim petition till its realization.

In the result, both the appeals are allowed to the extent as indicated above. However, the parties will bear their own costs.

Let a photocopy of this order be placed on the file of another connected case.