(2015) 04 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : CM Nos. 6820-CII and 6818-CII of 2015 in FAO No. 2237 of 2015 (O/M) and CM Nos. 6838-CII and 6837-CII of 2015 in FAO No. 2243 of 2015 (O/M)

National Insurance Co. Ltd. — APPELLANT

Vs

Rajkali and Others — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 163-A, 166, 168
Penal Code, 1860 (IPC) — Section 279, 304-A, 427

Citation : (2015) 04 P&H CK 0065

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Sandeep Suri, for the Appellant

Final Decision : Dismissed

Judgement

Kuldip Singh, J.

CM Nos. 6820-CII and 6818-CII of 2015 in/and FAO No. 2237 of 2015 (O/M)

1. There are 13 days'' and 4 days'' delays in filing and re- filing the appeal.

2. For the reasons mentioned in the application, the delays of 13 days and 4 days in filing and re-filing the present appeal is condoned.

3. Applications accordingly stand disposed of.

Main cases

4. By this order, I will dispose of FAO No. 2237 of 2015 titled as National Insurance Company Ltd. Versus Rajkali and others and FAO No. 2243 of 2015, titled as National Insurance Company Ltd. Versus Nazrin and others.

5. The insurance company has filed these appeals against the award dated 30.10.2014, passed by the Motor Accident Claims Tribunal, Gurgaon, (in short

''the Tribunal''), vide which the MACT Case No. 3 of 2014 titled as Nazrin and others Versus Kalu Ram and others and MACT Case No. 7 of 2014 titled as Rajkali and others Versus Kalu Ram and others were disposed of by common award.

6. The facts of the case are that on 27.11.2013, at about 11:30 AM, Jamshed alongwith Devender was going to Mayfield Garden, Gurgaon, on the motorcycle bearing registration No. HR-26- Q-0452. The said motorcycle was being driven by Jamshed. Their employer Azad was following them on a separate motorcycle. When they reached near DPS School between Bakhtawar Chowk to Sector-51 T-point, a truck bearing registration No. RJ-31-GA-3833, being driven by respondent No. 1, namely, Kalu Ram, hit the motorcycle. As a result of the accident, Jamshed and Devender fell on the road and were crushed by the offending vehicle. The driver left the offending vehicle at the spot and ran away. Azad witnessed the occurrence. FIR No. 802, dated 27.11.2013 under Sections 279, 304-A, 427 IPC was registered at Police Station Sadar, Gurgaon, against the driver of the offending vehicle.

7. The wife and the parents of Jamshed filed MACT No. 3 of 2014, whereas the parents, minor brother and sister of Devender also filed a separate claim petition No. 7 of 2014. The Tribunal took the income of deceased Jamshed to be Rs. 5,000/- per month. It added 50% income on account of future prospects and after granting compensation for loss of consortium, loss of love and affection and funeral expenses, awarded a sum of Rs. 13,05,000/- as compensation to the claimants.

8. The Tribunal also found that deceased Devender was unmarried and his income was also taken to be Rs. 5,000/- per month being the income of unskilled labourer and a sum of Rs. 8,10,000/- was awarded after adding 50% on account of future prospects and deducting 1/2 towards personal expenses. The claimants were also granted Rs. 25,000/- on account of funeral expenses and Rs. 1,00,000/- for loss of love and affection and the total compensation of Rs. 9,35,000/- was awarded by the Tribunal.

9. The learned counsel for the insurance company has argued that in both the cases, the age of the parents should have been taken into consideration for applying the multiplier. However, the Tribunal erred in applying the multiplier as per the age of the deceased.

10. The matter was considered by this Court in FAO No. 429 of 2013 titled as United India Insurance Company Limited Versus Seema and others and FAO No. 430 of 2013 titled United India Insurance Company Limited Versus Savitri Devi and others, decided on 19.3.2015. This Court after considering the judgments of the Hon''ble Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, observed as under :-

"For this purpose, reliance has been placed on the authority of the Apex Court in

New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, . The question as to whether the multiplier on the basis of age of the deceased or the age of the parents of the deceased should be applied was considered by Two-Judges Bench of the Hon''ble Supreme Court in Sarla Verma''s case (supra). The matter was considered in 2013 by a Larger Bench, consisting of Three-Judges in Reshma Kumari and Others Vs. Madan Mohan and Another, . A Three-Judges Bench of the Apex Court approved the principles laid down in Sarla Verma''s case (supra). The Hon''ble Supreme Court considered the compensation to be determined under Sections 163-A and 166, 2nd Schedule of the Motor Vehicle Act, 1988 and on the basis of proved negligence, noted certain discrepancies. The Apex Court observed as under :-

"31. Section 168 of the 1988 Act provides the guideline that the amount of compensation shall be awarded by the Claims Tribunal which appears to it to be just. The expression, "just" means that the amount so determined is fair, reasonable and equitable by accepted legal standards and not a forensic lottery. Obviously "just compensation" does not mean "perfect" or "absolute" compensation. The just compensation principle requires examination of the particular situation obtaining uniquely in an individual case."

The Apex Court went on to observe further as under :-

"35. We have already noticed the Table prepared in Sarla Verma for the selection of multiplier. The Table has been prepared in Sarla Verma having regard to the three decisions of this Court, namely, Susamma Thomas, Trilok Chandra and Charlie for the claims made under Section 166 of the 1988 Act. The Court said that multiplier shown in Column (4) of the Table must be used having regard to the age of the deceased. Perhaps the biggest advantage by employing the Table prepared in Sarla Verma is that the uniformity and consistency in selection of the multiplier can be achieved. The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased''s death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency.

36. In Sarla Verma, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in Sarla Verma that claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependents. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law

on the point as we are in full agreement with the view in Sarla Verma.

37............ We do accordingly. If for the selection of multiplier, Column (4) of the Table in Sarla Verma is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be upto 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in Sarla Verma should be followed. This is to ensure that claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in Sarla Verma should be followed."

Therefore, the selection of multiplier as mentioned in column No. 4 in the case of Sarla Verma''s case (supra) is to be followed. The same was followed by a Two-Judges Bench in M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, . The Apex Court reiterated as under :-

"16. In the decision in Sarla Verma case (supra), this Court held that the multiplier to be used should be as mentioned in column (4) of the table of the said judgment which starts with an operative multiplier of 18. As the age of the deceased at the time of the death was 24 years, the multiplier of 18 ought to have been applied. The Tribunal taking into consideration the age of the deceased wrongly applied the multiplier of 17 and the High Court committed a serious error by bring it down to the multiplier of 12."

In case of age of a bachelor, the multiplier, as per his age is to be applied as per column No. 4 of the table given in Sarla Verma''s case (supra). The Tribunal has already applied the said principle, which was the correct approach in this case. Therefore, the contention of the insurance company that the multiplier, as per age of the parents of the deceased, should have been applied, stands negated."

11. In view of the matter, the multiplier as per the age of the deceased was correctly applied. So far as the future prospects are concerned, the authority of the Hon''ble Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, has not been overruled so far. It has been held that even the persons engaged in private job are entitled to addition of income on account of future prospects. Therefore, future prospects were also rightly considered and allowed. It being so, there are no merits in the present appeals.

12. Consequently, both the appeals stand dismissed.

