

(2018) 07 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 2727, 2728 Of 2013 (O&M) with Cross
Objections No.109, 110-CII Of 2016

National Insurance Company Limited

APPELLANT

Vs

Harjeet Singh & Ors

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 1 ACC 317

Hon'ble Judges : Sudip Ahluwalia, J

Bench : Single Bench

Advocate : Ashwani Talwar, Anil Kumar Spehia, Vivek Gupta

Final Decision : Allowed

Judgement

1. The above-mentioned two Appeals and Cross Objections have been filed on behalf of the Appellant-National Insurance Company Limited and the Original Claimants, seeking to assail the Awards of the Ld. Motor Accidents Claims Tribunal (MACT), Jalandhar dated 1.12.2012 in MACT Cases Nos.13 and 15 of 2012. The claimants in the aforesaid two Claim Petitions happen to be the Legal Representatives of one Jaswinder Kaur and her son Jasmeet Singh, both of whom had died in a Motor Accident, which took place on 5.10.2011, and it was alleged that the accident was caused by the rash and negligent driving of Respondent No.4 Harmel Singh. The Offending Vehicle being a Car bearing Registration No. PB-30-D-7979 was insured by the Appellant/Insurance Company.

2. After hearing both sides, the Ld. Tribunal vide its Impugned Awards granted compensation to the claimants to the extent of Rs.32,81,652/- and Rs.4,08,000/- with costs on account of deaths of Jaswinder Kaur and Jasmeet Singh respectively. However, in case of deceased Jasmeet Singh, the compensation was awarded only to his father namely Harjeet Singh, and not to the other claimants/Respondents who were the unmarried brother and sister of the said deceased, and therefore, ostensibly were not his dependents.

3. In case of deceased Jaswinder Kaur, the compensation with costs was awarded in equal share to all the claimants including Sandeep Kaur who is a married daughter of the said deceased. In FAO No.2728 of 2013, the Award of the Ld. Tribunal was sought to be assailed by contending that the Multiplier had been wrongly applied on the age of the deceased himself, whereas the compensation was awarded in favour of his father, who himself was working in the Punjab Roadways, and was therefore, not dependent upon the deceased. In FAO No.2727 of 2013, the Award was assailed by contending that since one of the claimants happened to be the husband of deceased Jaswinder Kaur and the other three are her own children who had attained the age of majority, so deduction to the extent of 50% for personal and living expenses of the deceased ought to have been made instead of 1/4th of her established income.

4. The claimants on the other hand, from their side have assailed the Awards since they are not satisfied with the quantum of compensation determined by the Ld. Tribunal, and in addition, it has been contended that even the Statutory Admissible amounts such as by way of Loss of Consortium, Funeral Expenses, Loss of Estate etc. have not been granted.

5. From the side of Insurance Company, reliance was placed upon the decision of the Supreme Court in 'Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Anr.' 2007 (2) R.C.R. (Civil) 674 to contend that the claimant/ Respondent Smt. Sandeep Kaur, who is a married daughter of deceased Jaswinder Kaur, was not entitled to any compensation under Section 166 of the Motor Vehicles Act, since she admittedly was residing in her matrimonial house and was not dependent upon her deceased mother.

6. The claimants/Cross Objectors from their side have relied upon the decision of the Apex Court in 'Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Anr.' 2009(3) R.C.R. (Civil) 77 and the subsequent Constitution Bench decision in 'National Insurance Company Limited Vs. Pranay Sethi and Ors.' 2017(4) R.C.R. (Civil) 1009, for contending that the compensation awarded to the claimants is inadequate. In addition, reliance has been placed upon another decision of the Supreme Court in 'Santosh Devi Vs. National Insurance Company Ltd. And others' 2012(2) R.C.R. (Civil) 882, wherein it was held that even the sons having attained the age of majority with no source of income are to be treated as dependents of a victim killed in a Motor Vehicular Accident.

7. In the light of the aforesaid contentions raised on behalf of both the sides, this Court now proceeds on to decide these Appeals and Cross Objections as follows -

FAO No.2728 of 2013 & Cross Objections No.110-CII of 2016

8. The factum of accident, negligence of Respondent No.4 and coverage of the offending vehicle by way of an Insurance Policy issued by the Appellant/National Insurance Company are not in dispute.

9. The deceased Jasmeet Singh is stated to have been working as a Carpenter

irregularly, but no concrete proof of his income was led before the Tribunal. It therefore, correctly assessed his notional income at Rs.4000/- per month on the basis of the prescribed minimum wages prevalent at the relevant time. Undisputedly, the deceased was unmarried at the time of his death, and as such personal deduction of 50% of his income was also correctly assessed and the Multiplier of '17' was also correctly applied by the Tribunal in accordance with the direction of the Supreme Court in Sarla Verma's case (supra) and as such the total entitlement of the claimants was fixed at Rs.4,08,000/-. However, Funeral expenses as well as compensation by way of Loss of Estate in favour of the claimants at the rate of Rs.15000/- each, also ought to be added in view of the Constitution Bench decision in National Insurance Company Limited's case (supra). Therefore, the actual admissible claim of the claimants is determined at Rs.4,38,000/- instead of Rs.4,08,000/- only as determined by the Tribunal. To that extent, the compensation made by the Ld. Tribunal in MACT Case No.13 of 2012 is modified.

FAO No.2727 of 2013 and Cross Objections No.109-CII of 2016

10. At the outset, it may be observed that the reliance of the Appellant/ Insurance Company on the decision of Apex Court in 'Smt. Manjuri Bera's case (supra) is inconsequential for the ultimate result in the present case. If anything, the said decision only underscores that a Legal Representative of the deceased victim, even if not dependent on him, is undoubtedly entitled to appropriate compensation under the Heading 'Loss of Estate', although admittedly the structured formula for computation as followed for the purpose of determining the dependency loss is not applicable to such Legal Representative. But in the present case, the concerned Respondent Smt. Sandeep Kaur, daughter of deceased Jaswinder Kaur, who was already married at the relevant time and therefore, not a dependent on her mother, had filed the claim jointly alongwith the other Legal Representatives, at least two of whom were unmarried at the relevant time, and thus entitled to compensation as dependents in view of the decision in Santosh Devi's case (supra). Her entitlement for compensation at least towards Loss of Estate cannot be challenged. Further, all the remaining three Legal Representatives, who happen to be the husband and other two children of the deceased, had attained the age of majority at the relevant time. Under these circumstances, all of them having filed the claim petition for compensation jointly are expected to apportion their respective shares amicably between themselves in pursuance of which they may determine how much of the compensation under the Heading 'Loss of Estate' or for that matter, even from the rest of the compensation to be awarded to all the claimants jointly should go to her (Smt. Sandeep Kaur) in view of any peculiar facts and circumstances which might exist in their intra family affairs.

11. It is further seen that in its impugned Award, the Tribunal had granted compensation to the claimants only by way of computation of the deceased's income and the consequent dependency loss of the claimants, but had denied

any other kind of compensation, such as by way of 'Transportation, Treatment and Funeral Expenses etc.', since according to the Ld. Tribunal "no other evidence regarding Transportation, Treatment and Funeral Expenses etc. has come on record". Such view of Ld. Tribunal would not appear to be tenable any further on account of the Constitution Bench decision in 'National Insurance Company Limited's case (supra), in which virtually automatic entitlement on account of Loss of Estate, Loss of Consortium and Funeral Expenses capped at Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively have been determined, which amounts again are held to be enhanced at the rate of 10% in every three years. Therefore, in the opinion of this Court, the relevant amounts under these Heads also ought to be included in the compensation payable to the claimants/ Respondents apart from their loss of dependency, which of course is to be assessed separately.

12. The salary income of the deceased as Rs.3,97,776/- per annum at the relevant time is not in dispute nor her age in view of which applicable Multiplier was held to be 11 in view of decision in Sarla Verma's case (supra). The Ld. Tribunal however, did not consider any deductions towards the Tax liability of the deceased by merely observing -

"As per the salary certificate Ex.A4 of the deceased, her gross salary at the time of her death was Rs.33,148/-. It further shows that no deduction was being made towards Income Tax."

13. Thereafter, the Ld. Tribunal also held that 'no addition on account of increment in the annual income towards future prospects' could be made as the deceased had crossed the age of 50 years at the time of her death. In addition, the deduction towards personal living expenses of the deceased was made at the rate of ¼th of her annual income and the Appellant/Insurance Company is aggrieved with each of these observations.

14. The Constitution Bench of the Supreme Court in National Insurance Company Limited's case (supra) has held that in the case of a deceased having a permanent job, addition to his salary income ought to be made towards future prospects, and where the age of the deceased was between 50 to 60 years, such increase should be restricted to 15% of the given income. Ld. Counsel for the Appellant/Insurance Company has submitted that even though no evidence regarding deduction of Income Tax from the salary of the deceased had come forth before the Tribunal, yet she was undoubtedly liable to pay such Tax since, in the relevant Assessment Year corresponding to the Financial Year (2011-12), only women having an annual income below Rs.1,90,000/- were exempted from paying Tax. While in case of the deceased, her annual income was much in excess of this figure by an additional amount of Rs.2,07,776/-. Tax at the rate of 30% on this amount comes to Rs.62,332/-, on account of which, the actual income for the purpose of determining the dependency loss would come to Rs.3,35,443/-per annum. To this, an addition of 15% by way of future prospects is to be added, which comes to Rs.50,316.45 P, thereby increasing her total

annual income to Rs.3,85,759.45 P only. Since she had only two surviving dependents being her unmarried son and daughter at the relevant time, so the deduction from such income for personal expenses of the deceased would have to be 1/3rd of the said amount, which comes to Rs.1,28,586.48 P and after deducting this amount, the actual income for determining the dependency loss would be Rs.2,57,172.52 P. By applying the Multiplier of 11 to this amount, the total dependency loss comes to Rs.28,28,897.72 P which is rounded off to Rs.28,28,898/- only. The additional amount of Rs.70,000/- on account of Loss of Estate, Funeral Expenses and Loss of Consortium as already noted in Para 11 earlier is to be added, and as such the total entitlement of the claimants comes to Rs.28,98,898/- only , which is less than the amount granted by the Ld. Tribunal.

15. With the above observations, the FAO No.2727 of 2013 is allowed in favour of the Appellant/Insurance Company after dismissing the Cross Objections filed by the Claimants/Respondents, whose entitlement is therefore, reduced to Rs.28,98,898/- from Rs.32,81,652/- as awarded by the Ld. Tribunal, while the FAO No.2728 of 2013 is dismissed and in allowing the Cross Objections, the entitlement of the Objectors/Claimants is enhanced to Rs.4,38,000/- from Rs.4,08,000/-. Costs alongwith rate of interest mentioned in the impugned Awards till the date of actual realization as passed by the Ld. Tribunal are also awarded in favour of the Cross Objectors/Claimants.