(2018) 07 P&H CK 0177

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1355 Of 2016 (O&M)

National Insurance Company Limited — APPELLANT

Vs

Ram Nath And Others — RESPONDENT

Date of Decision : 24-07-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 2 AndhWR 206

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Lalit Garg, Karan Singh

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J

National Insurance Company Limited has filed the instant appeal assailing the award dated 19.11.2015 passed by the Motor Accident Claims Tribunal, Panchkula and in terms of which a total compensation amount of Rs.23,20,000/- along with interest @ 7% per annum from the date of filing of the claim petition till realization has been awarded in favour of the claimants.

Brief facts of the case are that the claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed seeking compensation to the tune of Rs.50 lakhs on account of death of Pardeep Kumar in a motor vehicle accident that took place on 19.04.2013. Claimants were the parents of the deceased who was stated to be a bachelor. It was stated that Pardeep Kumar (since deceased) was going on his motorcycle and was struck by a tractor bearing registration No. HR-03-L-4722 which was being driven by Chaudhary Ram in a rash and negligent manner.

Upon pleadings of the parties, the following issues were framed by the Tribunal:-

1. "Whether death of Pardeep Kumar has taken place due to accident caused by Tractor bearing No.HR-03-L-4722 being driven by respondent No.1 rashly and

negligently? OPP.

2. Whether claimants are entitled to compensation, if so to what amount and from whom? OPR.

3. Whether respondent No.1 was not having valid and effective driving licence? OPR3

4. Relief."

Since counsel for the appellant-Insurance Company has confined the scope of the instant appeal only with regard to quantum of compensation, this Court would advert to the findings returned by the Tribunal as regards issue No.2 only.

Perusal of the impugned award reveals that the Tribunal has taken the age of the deceased to be 26 years i.e. the date mentioned in the Matriculation Examination Certificate produced on record as Ex.P-4 as also in the PAN card of the deceased. Even though the claimants had asserted that the deceased Pardeep Kumar was earning Rs.20,000/- per month by doing the repair work of computers and Rs.10,000/- by doing the teaching job yet the Tribunal has assessed the monthly income of the deceased to be Rs.10,000/- per month. 1/4th cut has been applied towards the personal and living expenses of the deceased. By taking the age of the deceased as 26 years, multiplier of 17 has been applied. An additional income of 50% has been granted towards future prospects. In addition thereto a sum of Rs.25,000/-was awarded in lumpsum to the claimants towards funeral expenses, transportation of the dead body and last rites etc. The total compensation awarded, accordingly, was Rs.23, 20,000/-.

Counsel for the appellant-Insurance Company has argued that no evidence has come forth at the hands of the claimants to prove the monthly income of the deceased and as such it is only on guess work that the Tribunal has assessed the monthly income to be Rs.10,000/- which is on the higher side.

It is urged that as on the date of accident i.e. 19.04.2013 minimum wages admissible to a higher skilled worker would be Rs.6000/- approximately. That apart, it is submitted that even the increase in income @ 50% towards future prospects is much on the higher side. Further argued that the Tribunal has erred in making the deduction of only 1/4th towards personal and living expenses in view of the fact that the deceased was a bachelor.

Per contra, Mr. Karan Singh, learned counsel representing the respondents/ claimants would submit that the compensation awarded is based on cogent and valid reasoning and does not call for any interference.

Counsel for the parties have been heard and the case paper book has been perused. It is a case where the claimants had asserted that deceased Pardeep Kumar was earning Rs.20,000/- per month by doing repair of computers and Rs.10,000/- by doing teaching job i.e. a total income of Rs.30,000/-per month. However, no evidence was adduced on record to substantiate such claim.

Be that as it may, it has come on record that the deceased possessed Diploma in Electronics and Communications. Under such circumstances, no exception can be taken to the view formulated by the Tribunal assessing the monthly income of a technically qualified person to be Rs.10,000/- per month.

Even as per claim of the claimants, the deceased was a self-employed person. Under such circumstances and by applying the dictum laid down by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009, the Tribunal ought to have awarded 40% increase in income towards future prospects as opposed to 50% that has been granted. It is so directed.

This Court further finds that the Tribunal has erred in making deduction of 1/4th towards personal and living expenses of the deceased. Concededly, deceased Pardeep Kumar was unmarried. Under such circumstances and as has been held by the Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another 2009 (3) RCR (Civil) 77, 50% deduction should have been made towards personal and living expenses. It is so directed.

The amount of Rs.25,000/- awarded by the Tribunal towards funeral expenses etc. would stand enhanced to Rs.30,000/- by following the guidelines in Pranay Sethi's case (supra) i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

In view of the above, the compensation amount in favour of the claimants is re-assessed in the following terms:-

Sr. No.

Head

Calculation

1.

Income 10,000/- p.m.

Rs.10,000

+ 40%

increase

towards

future

prospects

=Rs.14,000/-

2.

50%

deduction

towards

Rs.14000-7000=7000/-

personal expenses of the

deceased

7000 x 12=84,000/-

3.

Compensation

after

84,000 x 17=14,28,000/-

applying multiplier of 17

4.

Conventional Heads: loss

30,000/-

of

estate

and

funeral

expenses

5.

Total

Rs.14,58,000/-

Revised compensation payable to the claimants/respondents is determined as above.

Appeal is allowed in the aforesaid terms.

