(2018) 12 P&H CK 0119

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1401, 5663 Of 2017 (O&M)

National Insurance Company Ltd. APPELLANT

Vs

Lakhwinder Kaur And Others RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:
Motor Vehicles Act, 1988 — Section 163A

Citation : (2018) 12 P&H CK 0119

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Om Pal Sharma, Armaan Gagneja, Munish Gupta

Final Decision : Partly Allowed

Judgement

Avneesh Jhingan, J.

The aforesaid two appeals are being disposed of vide common order, as these are arising out of the same award.

The award dated 12.12.2016 passed by Motor Accident Claims Tribunal, Patiala (for short 'the Tribunal') has been assailed by the insurer of motorcycle bearing registration No. PB-11-BS-4411 (hereinafter referred to as 'offending vehicle') in FAO No. 1401 of 2017 and by the legal heirs of Bhupinder Singh (deceased) in FAO No.5663 of 2017 by filing two separate appeals.

The brief facts of the case are that on 13.09.2015, Bhupinder Singh alongwith Gurpreet Singh was returning from Sanaur, Patiala on the offending vehicle. When they reached near Tej Bagh Colony at about 3.00 PM the offending vehicle struck with a pig, as a result, the offending vehicle became out of control. Both the occupants of the motorcycle fell down and sustained injuries on their persons. Bhupinder Singh was taken to Rajindra Hospital, Patiala from where he was referred to PGI, Chandigarh where he died on 14.09.2015. DDR No. 9, dated 14.09.2015, was lodged with the local police A claim petition under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, two children and parents of Bhupinder Singh (deceased).

The Tribunal after considering the facts and appreciating the evidence adduced held that the contesting respondents never adduced any evidence to rebut the evidence of the claimants that Bhupinder Singh lost his life in the accident involving the offending vehicle.

The Tribunal awarded a sum of Rs.5,29,500/- alongwith interest @6% per annum. The amount awarded included Rs.5000/- for loss of consortium, Rs.2500/- for loss of estate and Rs.2000/- for funeral expenses. The respondents were held jointly and severally liable to pay the compensation.

The income of the deceased was assessed by the Tribunal as Rs.40,000/- per annum. Multiplier of 13 was applied.

Heard learned counsel for the parties and perused the paper book as well as record.

Learned counsel for the insurer contended that the Tribunal erred in awarding the compensation as the case of the claimants was not covered under Section 163-A of the Act. In the pleadings claimants pleaded that the deceased was earning between Rs.45,000/- to Rs.50,000/- per annum. He further argued that no deduction for self expenses was made by the Tribunal in consonance with the Second Schedule to the Act.

Learned counsel for the claimants contended that the Tribunal has rightly assessed the income of the deceased as Rs.40,000/- per annum. He further submits that compensation awarded is on lower side and needs to be enhanced.

There is no dispute on the proposition of law that compensation under Section 163-A of the Act can be claimed by the legal heirs of the deceased where, earning of the deceased was not more than Rs.40,000/- per annum. The provision of Section 163-A of the Act has been made for the strata of the society where the earning of the deceased is less than Rs.40,000/- per annum and this amount cannot be used to cap the income of the deceased.

The Supreme Court in Deepal Girishbhai Soni and others vs. United India Insurance Co. Ltd, Baroda; 2004 (5) SCC 385, has held that the provision of Section 163-A of the Act can be resorted to by only that person, whose annual income is not proved to be above Rs.40,000/-.\

From perusal of award, it is evident that the Tribunal has duly considered the decision of the Supreme Court in Deepal Girishbhai Soni's case (supra). It is not merely the pleadings of the claimants, which will determine the earning of the deceased. The onus is on the claimants to substantiate the pleadings with regard to the earning of the deceased. There was not even iota of evidence on record to establish that the income of the deceased was, as claimed in the petition.

In such circumstances no error can be pointed out in the award passed by the Tribunal assessing the annual income of the deceased as Rs.40,000/- per annum.

The contention raised by the insurer that claim filed was not covered under Section 163-A of the Act is rejected.

The contention raised by the insurer regarding making of 1/3rd deduction for self expenses deserves acceptance.

The compensation is to be calculated in consonance with the Second Schedule to the Act. As per Second Schedule to the Act, 1/3rd deduction for self expenses is to be made irrespective of number of dependants survived by the deceased. There is no dispute between the parties regarding applying of multiplier of 13 by the Tribunal.

In the appeal filed by the claimants no substantial ground has been averred for enhancement of compensation. As such, the same is dismissed.

In view of above discussion, the compensation is recalculated as under:

Head

Compensation awarded

(i)

Income

Rs.40,000/- per annum

(ii)

Deduction for self expenses

Rs.13,333/- per annum

(iii)

Total Income

Rs.26,667/- per annum

(iv)

Multiplier

13 (as per age of deceased)

(v)

Total Dependency

Rs.26,667/-x13=Rs.3,46,671/-

(vi)

Funeral expenses

Rs.2000/-

(vii)

Loss of estate

Rs.2500/-

(viii)

Loss of Consortium

Rs.5000/-

Total Compensation awarded

Rs.3,56,171/-

The award dated 12.12.2016 is modified to the extent that the amount awarded of Rs.5,29,500/- is reduced to Rs.3,56,171/- and the claimants/appellants shall be entitled to interest @6% per annum on the said amount of compensation from the date of filing of claim petition till actual realization of amount.

The appeal i.e. FAO No. 1401 of 2017 filed by the insurer is partly allowed and the appeal i.e. FAO No. 5663 of 2017 filed by the claimants is dismissed.

