(2019) 04 P&H CK 0142

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 5813 Of 2014 (O&M)

National Insurance Company Ltd. APPELLANT

Vs

Raksha Kumari And Others RESPONDENT

Date of Decision : 22-04-2019

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

Citation : (2019) 04 P&H CK 0142

Hon'ble Judges : Avneesh Jhingan, J

Bench : Single Bench

Advocate : Neeraj Khanna, Ravinder Arora, Vinod K. Kanwal

Final Decision : Disposed Off

Judgement

Avneesh Jhingan, J

The insurer of Car bearing registration No. DL-0CD-8801 (for short 'the car) is in appeal against the award dated 10.3.2014 passed by the Motor Accident Claims Tribunal, Kurukshetra (for short 'the Tribunal') in MACT Case No. 382 of 2013.

No one put in appearance on behalf respondents No. 1 to 4 inspite of service. Mr. Vinod K. Kanwal, Advocate, who is present in Court is appointed as amicus-curiae on behalf of respondents No.1 to 4 to assist the Court.

The brief facts necessary for adjudication of the present appeals are that on 6.8.2012, Gaurav Kumar alongwith Anil Kumar, Sharesht @ Surinder, Avtar Singh and Baby Ayush were going in a car from village Kaul to Radaur, District Yamuna Nagar to attend the marriage of Sanejev Kumar. On 7.8.2012, when they were returning back, the car which was being driven by Manoj Kumar, struck against a stationary truck from behind. The truck was parked in the middle of the road without any indicator. As a result of the accident, Avtar Singh received fatal injuries and lost his life.

A claim petition under Section 163-A of Motor Vehicles Act, 1988 (for short 'the

Act') was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the car was involved in the accident and driver-cum-owner and insurer of the car were held liable to pay compensation and awarded a sum of Rs. 7,43,400/- along with interest @ 7.5% per annum. The amount awarded included a sum of Rs. 1,00,000/- for loss of consortium, Rs. 1,00,000/- for loss of care and guardian of minor child Richa and Rs. 25,000/- for funeral expenses.

Learned counsel for the insurer raises three fold submissions firstly that the Tribunal erred in making 1/4th deduction for self-expenses instead of 1/3rd and wrongly applied multiplier of 18 instead of 17 and awarded sum of Rs. 1,00,000/- for loss of consortium, Rs. 1,00,000/- for loss of care and guardian of minor child Richa and Rs. 25,000/- for funeral expenses.

Learned counsel for the claimants contended that the income assessed by the Tribunal is on lower side. The monthly income assessed was Rs. 3,200/-. He could not raise any serious dispute that the compensation is to be awarded as per the Second Schedule to the Act. Learned counsel further argued that rate of interest awarded is on lower side.

The contention raised by learned counsel for the insurer deserves acceptance.

The Supreme Court in Deepal Girishbhai Soni v. United India Insurance Co. Ltd. 2004 AIR (SC)2107 Has held as under:

''62. We, therefore, are of the opinion that Kodala (supra) has correctly been decided. However, we do not agree with the findings in Kodala (supra) that if a person invokes provisions of Section 163-A, the annual income of Rs. 40,000/- per annual shall be treated as a cap. In our opinion, the proceeding under Section 163-A being a social security provision, providing for a distinct scheme, only those whose annual income is uptoRs. 40,000/- can take the benefit thereof. All other claims are required to be determined in terms of Chapter XII of the Act.''

In view of the decision of the Supreme Court and considering the age of the deceased, the monthly income is assessed as Rs. 3300/- and as per

Second Schedule to the Act, 1/3rd deduction is made for self-expenses. As the deceased was 25 years of age multiplier of 17 is applied. The amount under the conventional heads are awarded as per Second Schedule to the Act i.e. Rs. 2000/- for funeral expanses, Rs. 2500/- for loss of estate and Rs. 5000/- for loss of consortium.

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

Sr. No.

Particulars

Amount Awarded

1.

Income

Rs. 3300/-

2.

1/3rd deduction for self expenses

Rs. 2200/-

3.

Applying multiplier of 17

Rs. 4,48,800/-

4.

Conventional heads

Rs. 9500/-

Total

Rs. 4,58,300/-

The award dated 10.3.2014 in MACT Case No. 382 of 2013 is modified to the extent that the amount awarded of Rs. 7,43,400/- is reduced to Rs. 4,58,300/-.

The contention of the learned counsel for the claimants regarding interest rate deserves acceptance. Keeping in view the facts and circumstances of the case, 7.5% interest rate awarded by the Tribunal is on lower side. As just and equitable compensation is to be awarded by the Courts under the welfare legislation, the interest rate is enhanced to 9% per annum. The claimants shall be entitled to interest @ 9% on the compensation from the date of filing of claim petition till realisation of the amount.

This Court vide order dated 9.1.2015 directed the insurer to deposit the entire amount of compensation including the arrears within one month and it was ordered that Tribunal shall disburse only 50% of the awarded amount to the claimants on furnishing adequate surety to its satisfaction. The claimant shall be entitled to balance amount as due in view of the present order passed.

The appeal is disposed of in the above terms.