(2015) 09 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : FAO No. 5584 of 2015 (O&M)

New India Assurance Company Ltd. APPELLANT

Vs

Karamjit Kaur and Others RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Employees State Insurance Act, 1948 — Section 53
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 09 P&H CK 0066

Hon'ble Judges : Lisa Gill, J

Bench : Single Bench

Advocate : Paul S. Saini, for the Appellant

Final Decision : Dismissed

Judgement

Lisa Gill, J—New India Assurance Company Limited has preferred the instant appeal impugning award dated 20.05.2015 passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal'').

2. Learned counsel for the appellant raises the following grounds of challenge:--

"(i) Claim petition under Section 166 of Motor Vehicles Act is barred in view of the provisions of the Provident Employees'' State Insurance Act, 1948.

(ii) Addition of 30% on account of loss of future prospects has been wrongly awarded. Deduction of 50% should have been made on account of personal expenses instead of 1/3rd for the reason that the claimant-daughters are not minor.

(iii) Award on account of loss of love and affection could not have been awarded to the two claimants-daughters as they were not minor."

3. Facts of the case as narrated in the claim petition are that Kartar Singh (deceased) was working as a Supervisor (Electrical) in Stelco Strips Ltd., Focal Point, Ludhiana on a monthly salary of Rs. 12,050/-. This was a permanent job

and the deceased was in receipt of annual increment. He was accepting private contracts regarding electrical fittings and earning Rs. 32,050/- per month therefrom. He was aged about 47 years at the time of death and all the claimants (widow and two daughters) were dependent upon him. He was proceeding on his bicycle on 23.03.2013 at about 7.20 p.m. When he reached near the main gate of Oswal Woollen Mill, GT Road, Ludhiana, truck bearing No. HR-38V-5277 driven in a rash and negligent manner by respondent No. 4 - Surjit Singh came from behind and rammed into the cycle of Kartar Singh, who died at the spot. FIR No. 85 dated 23.03.2013 was registered against the said respondent at Police Station Focal Point, Ludhiana.

4. Claim petition under Section 166 of Motor Vehicles Act was preferred by the claimants for a compensation to the tune of Rs. 70 lakhs. Claim was contested by the respondents.

5. Following issues were framed by the Tribunal:--

"1. Whether the accident, that took place at 7.20 p.m. on 23.03.2013 in the area of PS Focal Point, Ludhiana, occurred due to rash and negligent driving of the truck bearing registration No. HR-38V-5277 by respondent No. 1? OPP

2. Whether Kartar Singh received injuries in the said accident and died due to them? OPP

3. Whether the claimants are entitled to recovery of Rs. 70 lacs from the respondents as compensation for the said death along with interest? OPP

4. Whether the petition is not maintainable on account of the preliminary objections raised in the written statement? OPR.

5. Relief."

6. Learned Tribunal on appreciation of evidence on record concluded that Kartar Singh sustained fatal injuries in the accident caused on account of rash and negligent driving of the offending vehicle by respondent No. 4. This finding has attained finality.

7. Learned Tribunal assessed monthly salary of deceased to be Rs. 12,050/- on the basis of salary certificate Ex. C13 and salary record Ex. C16 to C38 duly proved by CW3. His date of birth was ascertained as 15.12.1965 on the basis of his Aadhaar Card Ex. C2. 1/3rd deduction was effected and monthly dependency worked out as Rs. 8,033 per month and Rs. 96,396/- per annum. Multiplier of 13 was applied and dependency worked out to Rs. 12,53,148/-. Addition of 30% was awarded on account of loss of future prospects and total dependency re-worked at Rs. 16,29,093/-. A sum of Rs. 25,000/- was awarded on account of funeral expenses. Rs. 1,00,000/- on account of loss of consortium and Rs. 50,000/- each on account of loss of care and guidance was awarded. Compensation of Rs. 18,54,093/- was awarded, the details of which are under:--

8. Submission of learned counsel for the appellant that the claimant having

secured benefit under the Employees'' State Insurance Act would be barred to claim any compensation under the Motor Vehicles Act has been considered by this Court in Nanku Ram Vs. Mohan Singh, (2014) 3 PLR 453 and answered in negative. It is clear that Section 53 of the Employees'' State Insurance Act stipulates a bar only in a case of employment injury and cannot be a bar for pursuing a petition under the Motor Vehicles Act. Therefore, this argument on behalf of the appellant is rejected.

9. Further, reference is made to order dated 02.07.2014 SLP (c) No. 1673 of 2015 titled National Insurance Company versus Pushpa and others to argue that the matter regarding addition in income on account of future prospects in respect of self employed/privately employed persons stands referred to a larger bench by the Hon''ble Supreme Court, therefore, award of compensation on account of loss of future prospects is unjustified.

10. However, it is not disputed that operation of the decision of the Hon''ble Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 has not been stayed. In Munna Lal Jain and Others Vs. Vipin Kumar Sharma and Others(2015) 2 ACC 806 : (2015) ACJ 1985 : (2015) 7 AD (SC) 185 : (2015) 4 ALD 114 : (2015) 4 ALLMR 436 : (2015) 4 BomCR 72 : (2015) 3 CGLJ 93 : (2015) 3 RCR(Civil) 447 : (2015) 3 RLW 2021 : (2015) 6 SCALE 522 : (2015) 6 SCC 347 : (2015) 2 WLN 113 , a decision rendered subsequent to the abovesaid reference, the Hon''ble Supreme Court has granted an addition on account of loss of future prospects. Therefore, addition of 30% on account of loss of future prospects has been correctly afforded by the Tribunal. There is no justification for denial of this benefit to the widow and daughters of the deceased who was an employee on the establishment of Stelco Strips Ltd., Focal Point, Ludhiana since 1991 as is evidenced by the testimony of CW3 as well as Ex. C13.

11. Equally unacceptable is the argument that two daughters of the deceased not being minor, deduction of 1/2 should have been made instead of 1/3rd. A perusal of the evidence of CW1 Karamjit Kaur, widow of the deceased clearly shows that both the daughters though major were students and completely dependent on the deceased. Claimant Shivali - respondent No. 2 was pursuing her final year in BCA at Guru Nanak Girls College, Model Town, Ludhiana at the time of death of Kartar Singh. Claimant-respondent No. 3 Harmeet Kaur was pursuing her second year B.Com at Guru Nanak Girls College, Model Town, Ludhiana. There is no evidence on record to refute the said evidence. There is nothing on record, which would indicate that they were not dependent upon the deceased. Therefore, deduction of 1/3rd has been correctly applied.

12. Similarly, compensation on account of loss of care and guidance to the daughters cannot be denied in this situation only on the ground that they are not minor. In the facts and circumstances of the case, compensation to the tune of

Rs. 50,000/- each on account of loss of care and guidance has been rightly awarded. Learned counsel for the appellants is unable to point out any infirmity, illegality or perversity in the impugned award which warrants interference for reduction of the compensation awarded to the claimants.

13. No other point has been raised or urged before this Court.

14. Consequently, this appeal is dismissed.

