(2019) 03 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : First Appeal From Order No. 329 Of 2018 along with Cross objections No. 105 Of 2018

Oriental Insurance Company Ltd — APPELLANT

Vs

Santosh Kumari And Others — RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Citation : (2019) 03 SHI CK 0030

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Shilpa Sood, C.N. Singh, Prateek, Sanjeev Kumar Suri

Final Decision : Partly Allowed

Judgement

Sureshwar Thakur, J

1. The instant appeal, stands directed, by the aggrieved insurer/appellant herein, against the award pronounced, by the Motor Accident Claims Tribunal-IV, Kangra at Dharamshala, H.P., upon, MAC Petition No. 03/D/II/2008, whereunder, compensation amount comprised, in, a sum of Rs.8, 20,000/- along with costs, and, interest accrued thereon, at the rate of 9% per annum, commencing, from, the date of petition till realization thereof, stood, assessed, vis-a-vis, the claimants, and, the apposite indemnificatory liability thereof, was, fastened upon the insurer, (ii) whereas, through cross-objections bearing No.105 of 2018, the claimants, hence seek enhancement of compensation.

2. The learned counsel appearing for the insurer, (i) does not contest, the, validity, of the, affirmative findings rendered, upon, issue No.1, appertaining to the demise of deceased Lal Bahadur, being a sequel of rash and negligent manner of driving, of the offending vehicle, by its driver, respondent No.4 herein, (ii) nor he contests, the validity, of, the disaffirmative findings rendered, upon, issue No.4 appertaining to the driver of the offending vehicle, at the relevant time, not, holding a valid, and, effective driving licence, nor also he contests the

validity of disaffirmative findings rendered, upon, issue No.5 appertaining to the driver/owner of the offending vehicle, breaching the terms and conditions of the insurance policy, (iii) nor he obviously contests the fastening, of, the apposite indemnificatory liability, upon, the insurer.

3. However, the learned counsel appearing for the insurer, has, cast a challenge, vis-a-vis, the quantum of compensation, as assessed qua the claimants, on anvil of hence, it being excessive. The main contesting ground raised, by the insurance, is, comprised in the claimants hence being paid a sum of Rs.13,700/- per month, as family pension, thereupon, the assessment of compensation, by the learned tribunal under the head "loss of future income", borne in a sum of Rs.5,00,000/-rather being infirm. He also contends that the assessment of compensation, vis-a-vis, all the claimants, under, the head "Loss of consortium/ love and affection", borne in sum of Rs.1,00,000/- each, total Rs.3,00,000/-, and, assessment of compensation under the head "Funeral Charges" borne in a sum of Rs.20,000/-, being also infirm, in view of the mandate encapsulated in a case titled as National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in 2017 ACJ 2700. On the other hand, the learned counsel appearing, for the cross-objectors/claimants, has contends, with much vigour, before this Court, that the learned tribunal, has committed a gross infirmity while assessing, loss of future income, vis-a-vis, the claimants, and, it being borne in sum of Rs.5,00,000/-. Significantly, when, hence, the mandated multiplier method, for, computation, of compensation, remains irrevered.

4. The afore submission, as, addressed before this Court, by the learned counsel appearing, for the insurer, (I) that, since the claimants are getting a sum of Rs.13,700/- per month, under family pension, hence, the afore sum be taken into consideration, while, adjudging, the, quantum compensation, vis-a-vis, the claimants, conspicuously, under the head "Loss of future income", is rejected, as a catena of decisions rendered by the Hon'ble Apex Court rather mandate (i) that the amounts received by the claimants, by way of provident fund, pension, life insurance policies, and, similarly, in cash, bank balance, shares etc., bearing no co-relation, with, the compensation amounts, receivable by the dependents, under, the Motor Vehicles Act, and, the afore monetary defrayments rather being unamenable, for, deduction, from, the compensation amount. However, the other submission of the learned counsel, appearing for the insurer qua assessment of compensation, under the heads "Loss of consortium/love and affection" vis-a-vis, each, claimants, and compensation assessed under the head "Last rites and Funeral Charges" rather being infirm, is accepted, and, is nullfied, in, consonance with the Pranay Sethi's case (supra). .

5. Be that as it may, a perusal of the award impugned before this Court, reveals, that the learned tribunal, has assessed a lump sum compensation, borne in a sum of Rs.5,00,000/-, vis- a-vis, the claimants, under, the head "Loss of future income", however, the afore quantification of compensation, (a) suffers from a gross illegality, given the learned tribunal, rather omitting, to, mete reverence to

the law laid down by the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another, reported in (2009)6 SCC 121, wherein, the hon'ble Apex Court, has simplified, the determination of claims, towards compensation, by specifying certain parameters.

6. There is no dispute that the deceased, was employed, as, a Junior Assistant, in, the H.P. Board, of, School Education Dharmashala. His salary slip, for the month of August, 2007, as, placed on record, and, marked as Mark-C., carries reflections qua the gross salary of the deceased being borne in a sum of Rs.10,949/- per month. Consequently, his per month income is assessed at Rs.10,949/- .

7. The deceased, is, in the postmortem report, is, rather reflected to be aged 52 years, at the relevant time. With the mandate of the Hon'ble Apex Court, in case titled as National Insurance Co. Ltd. vs. Pranay Sethi and others, reported in 2017 ACJ 2700, expostulating (i) that where the deceased concerned, is rendering employment, in a government organization(s), as, is the apt employment, of, the deceased, (a) thereupon, hikes or accretions, on anvil of future incremental prospects, vis-a-vis, the salary drawn by him, at the time contemporaneous, to, the ill fated mishap, from his employer, being also meteable thereto. However, before applying the mandate of the aforesaid relevant paragraph, borne in the judgment supra, it is significant to also bear in mind, the age of the deceased, (ii) since the postmortem report reflects, the deceased being aged 52 years, at the relevant time, hence with the afore extracted paragraph, mandating, of, accretions towards future incremental prospects, vis-a-vis, the gross salary of the deceased, being pegged upto 10% thereof, besides being tenably meteable, vis-a-vis, the apposite last gross salary. Consequently, after meteing 10% increase(s), vis-a-vis, the apposite last gross salary, thereupon, the relevant last gross salary, of, the deceased is recoknable to be Rs.12044/-, [Rs.10949(last salary of the deceased)+Rs.2800/-(10% of the last gross salary). Significantly, the number of dependents, of, the deceased, are, three, hence, 1/3rd deduction is to be visited upon a sum of Rs.12044/-, hence, after making, the, apt aforesaid deduction vis-a-vis Rs.12044/-, the per mensem, dependency hence comes to Rs.8029/-. In sequel whereto, the annual dependency, of the dependents, upon, the income of the deceased is computed, at Rs.8029 x12=96,348/-. After applying the apposite multiplier of 11, the total compensation amount, is assessed in a sum of Rs.96,348/- x 11=Rs.10,59,828/- (Rs.ten lacs, fifty nine thousand, eight hundred twenty eight only).

8. However, the quantification, of damages, by the learned Tribunal in a sum of Rs.1 lac each, vis-a-vis, the claimants, (i) under the head, "loss of consortium/ love and affection", (ii) and quantification, of a sum of Rs.20,000/-, vis-a-vis, the claimants, under the head, "Last rites and Funeral Charges", is in, conflict with the mandate of the Hon'ble Apex Court rendered in Pranay Sethi's case (supra), (b) wherein, it has been expostulated, that reasonable figures, under conventional heads, namely, loss to estate, loss of consortium, vis-a-vis, the

widow of the deceased, and, funeral expenses being quantified only upto Rs.15,000/-, Rs.40,000/-, and Rs.15,000/- respectively. Accordingly, in addition to the aforesaid amount of Rs.10,50,828/-, the petitioners/claimants, are, entitled under conventional heads, namely, loss to estate, loss of consortium, and, funeral expenses, sums of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively, as such, the total compensation to which the petitioners are entitled comes to Rs.10,59,828/- + Rs.15,000/- + Rs.40,000/- + Rs.15,000/- = Rs.11,29,828/-(Rs. Eleven lacs, twenty nine thousand, eight hundred twenty eight only).

9. For the foregoing reasons, the appeal filed by the insurer is partly allowed, whereas, the cross-objections instituted by the claimants/cross-objectors are allowed, and, the impugned award, is, in the aforesaid manner, hence modified. Accordingly, the petitioners, are, held entitled to a total compensation of Rs.11,29,828/-, along with interest @ 9 %, from, the date of petition till the date, of, deposit, of the compensation amount. The amount of interim compensation, if awarded, be adjusted in the aforesaid compensation amount, at the time of final payment. Out of the aforesaid compensation amount, claimant No.1 Santosh Kumari, being the widow of the deceased, shall be entitled, to 60 % of the compensation amount, and, the remaining 40% of the compensation amount, be apportioned in equal shares amongst claimant No.2 Pratibha, and, claimant No.3. Mr. Karan, the children of the deceased. All pending applications also stand disposed of. Records be sent back forthwith.

