(2019) 03 P&H CK 0258

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 200 Of 2016

Reliance General Insurance Co. Ltd. APPELLANT

Vs

Salochna And Others RESPONDENT

Date of Decision : 25-03-2019

Acts Referred:
Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2019) 03 P&H CK 0258

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Sanjeev Kodan, Vinod Kanwal, Gaurav Kumar, Vikram Singh Dhakha

Final Decision : Allowed

Judgement

Amol Rattan Singh, J

1. By this appeal, the appellant-insurance company challenges the quantum of compensation awarded to the respondents-claimants for the unfortunate death of Pritam Singh alias Preeta, in a motor vehicle accident that took place on May 15, 2014.

Upon a specific query put to the learned counsel for the appellant, he very fairly submits that the issue of negligence in causing the accident is not under challenge, with respondent no.7 having been found negligent in driving a car bearing registration no.HR-05X-6000, vide the impugned Award passed by the learned Motor Accident Claims Tribunal, Karnal (in short "the Tribunal").

2. As regards the compensation awarded, firstly, it is to be noticed that the claimants before the Tribunal were 6 in number , being the widow,

4 children and mother of the deceased, with two of the children, i.e. respondents no.4 and 5, shown to be minors as on the date of the accident.

3. Though the respondent-claimants had contended that deceased Pritam Singh was working as Fish Farmer, earning Rs.20,000/- per month, however, no

evidence is seen to have been led to support that claim and consequently the income of the deceased was taken to be that of an unskilled labourer, i.e. Rs.8100/- per month, at the time of his accident, in terms of wages fixed by the District Collector for the period from

1. 03.2014 to 28.02.2015. To that amount was added 30% towards loss of future prospects of an increased income (an amount of Rs.2430/- per month), with the monthly income of the deceased therefore assessed to be Rs.10,530/- per month.

Respondent no.1, i.e. the widow of the deceased, was also held entitled to loss of consortium to the tune of Rs.1 lac, with the Tribunal having relied upon a judgment of the Supreme Court in Vimal Kanwar and others v. Kishore Dan and others, 2013(2) RCR (SC) 945. The 4 children of the deceased were also held entitled to a sum of Rs.2 lac each on account of loss of love and affection.

Respondent no.6 herein, i.e. the mother of the deceased, was also held to be entitled to Rs.1 lac under the same head.

4. As regards the loss of income to the claimants, it was held that the number of the dependents upon the deceased being 6, 1/4th of his income was to be deducted towards his personal expenses, thereby arriving at a figure of Rs.7897/- per month as loss of income to the claimants, or an annual loss of Rs.94764/, to which a multiplier of '14' was applied, the deceased having been found to be 45 years of age.

Consequently, as regards the loss of the dependents' income, the amount assessed was Rs.13,26,696/-, with no amount however granted towards medical expenses, but Rs.25,000/- having been awarded towards funeral expenses and another Rs.1 lac towards loss of estate.

Thus, the total amount for compensation awarded was Rs.25,51,696/-, on which interest @ 12% per annum, running from the date of filing of the claim petition till the realization of the amount, was also awarded.

5. As already recorded in the order of this Court dated 8. 03.2019, Mr. Kodan, learned counsel for the appellant-insurance company, had submitted that even the minimum wage taken by the Tribunal, of Rs.8100/- per month, was not as per the minimum wages notified by the Government of Haryana as on the date of the accident. Consequently, he had placed on record a communication issued by the Labour Commissioner, Haryana, addressed to various subordinate authorities on 22.02.2014, showing therein the minimum wages in relation to the consumer price index w.e.f. 01.01.2014.

That application, seeking to place on record the aforesaid communication (CM no.5561-CII of 2019) had been allowed by this Court on March 08, 2019, accepting it to be an application filed under Order 41 Rule 27 of the CPC, with this Court in fact having asked him on an earlier date to show as to what the minimum wages notified by the Haryana Government were.

In response thereto, learned counsel for the respondents-claimants has relied upon a judgment of the Supreme Court in Jakir Hussen v. Sabir and others, 2015(2) RCR (Civil) 141, from which he points to paragraph 14, holding therein to the effect that the minimum wages notified by the State Government do not have to be considered to be the income of a deceased person, with the deceased in that case being a driver, and the minimum wage in that category shown to be Rs.128 per day as per the notification of the Government of Madhya Pradesh; (Rs.3840/-per month). However, holding that a driver would reasonably be expected to earn Rs.4500/- per month, that was held to be the income of the deceased and compensation awarded accordingly.

6. Vide the last order recorded by this Court on March 08, 2019, I had, on the basis of the aforesaid communication issued by the Labour Commissioner, Haryana, directed the parties to place on record the compensation that would be payable according each of them, to the respondent-claimants, on the basis of the aforesaid minimum wages, in terms of the judgment of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, (2017) 16 SCC 680.

Today, such calculation is sought to be placed on record by Mr. Kodan, learned counsel for the appellant-insurance company, showing the total compensation payable to be Rs.9,43,600/-. However, learned counsel for the respondent-claimants having relied upon the aforesaid judgment of the Supreme Court, in the opinion of this Court, it would be appropriate to take the monthly income of the deceased to be an average between the two figures of Rs.8100/- (as had been taken by the Tribunal to be minimum wage on the basis of the District Collectors' rates (which is normally applicable to Government organizations employing casual labour) and the minimum wage as contained in the communication of the Labour Commissioner, Haryana (which though not given a specific exhibit number on the last date of hearing, is shown to be Ex.A-1 in the application filed for that purpose).

Consequently, it is accepted as Ex.A-1, it not having been refuted by the learned counsel for the respondents and it being accepted as a true communication from a Government authority.

7. Thus, seeing the disparity between Rs.5547/- and Rs.8100/-, a sum of Rs.6800/- is taken to be the deceaseds' monthly income, even though Mr. Kodan, learned counsel for the appellant-insurance company has vehemently opposed that figure.

However, this Court having taken a mean between the 'District Collectors' rates' and the rates given by the Labour Commissioner, in my opinion, the amount of Rs.6800/- is considered appropriate to be taken as the sum that may have been earned by the deceased at the time of his death, i.e. in May 2014.

That being so, learned counsel for the parties are AD IDEM on the amount of total compensation payable to the respondent-claimants (in terms of what has been held by this Court), with the learned counsel for the respondent-claimants however naturally still asserting that a higher income of the deceased should be assessed, with counsel for the appellant stating to the contrary. However, as per the wages assessed, the amount accepted to be payable to the respondents-claimants in terms of the ratio of the judgment of the Supreme Court in Pranay Sethis' case (supra) is Rs.11,41,000/-, the break up of the said calculations being as follows:-

Income of the deceased

Rs.6800/- per month

Rs.6375/- x 12 = Rs.76500/-

Towards loss of future prospects of an increased income @ 25% of the annual income

Rs.6800/- + Rs.1700/- =Rs.8500/-

Loss of annual income after deduction towards the personal expenses of the deceased @ 1/4th of the monthly income

Rs.8500-2125 =Rs.6375/- per month)

After applying a multiplier of '14' to the loss of income to the claimants

Rs.76500x14

Rs.10,71,000/-

Under Conventional Heads

Towards loss of consortium

Rs.40,000/-

Funeral Expenses

Rs.15,000/-

Towards loss of estate

Rs.15,000/-

Total

Rs.11,41,000/-

Thus, the said calculation in my opinion would be in terms of the ratio of the aforesaid judgment, with it having been held that as regards loss of consortium, a total amount of Rs.40,000/- is to be paid; and as regards funeral expenses and towards loss of estate, Rs.15,000/- under each head is to be paid. It was further held by their Lordships, as regards the loss of future prospects of an increased income for a deceased person in a non-salaried job, aged between 40-50 years, that 25% of the income earned by him is to be added to that income.

It is not in dispute that the deceased was 45 years of age and consequently, 25% of Rs.6800/- per month as has been assessed to be his earning, is to be added, thereby bringing up a total income of Rs.8500/- per month, from which amount 1/4th is to be deducted towards the personal expenses of the deceased had he remained alive, i.e. Rs.8500-2125 =Rs.6375/-. To that amount, a multiplier of '14' is to be applied in terms of the ratio of the judgment in Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77, with the total loss of dependent income coming to Rs.10,71,000/-. Rs.70,000/- has been added under the 'conventional heads', i.e. towards loss of consortium, loss of estate and to funeral expenses, thus bringing the total compensation payable to the respondents-claimants Rs.11,41,000/-.

8. Mr. Kodan also submits that interest @ 12% per annum awarded by the tribunal is highly excessive and as a matter of fact, it should be 6% per annum.

Whereas normally this Court would not grant interest more than 6% per annum, however, the reduction in the total amount of compensation to the family of an unskilled labourer being considerable, i.e. it having come down from Rs.25,51,696/- to Rs.11,41,000/-, it is considered appropriate that interest @ 7.5 % per annum be awarded on the principal sum, running from the date of filing of the claim petition till the date of realization.

The appeal is allowed to the aforesaid extent, with no order as to costs of this appeal.

