(2016) 12 SHI CK 0076

In the High Court Of Himachal Pradesh

Case No : FAO No. 429 of 2012

Reliance General Insurance Company Ltd. APPELLANT

Vs

Shiv Rajia RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 213

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ.

Bench : Single Bench

Advocate : Mr. Jagdish Thakur, Advocate, for the Appellant; Mr. Rakesh Thakur, Advocate, for the Respondent Nos. 1 & 2; Ms. Neelam Kaplas, Advocate vice Mr. J.R. Poswal, Advocate, for the Respondent No. 3

Final Decision : Disposed Off

Judgement

Mr. Mansoor Ahmad Mir, C.J.(Oral)—Mr. Rakesh Thakur, Advocate, stated at the Bar that claimant-respondent No. 2 has attained the age of majority. His statement is taken on record. Accordingly, guardian is discharged. Registry to make necessary entries in the cause title.

2. Subject matter of this appeal is the award dated 21st April, 2012, made by the Motor Accident Claims Tribunal-1 Solan, Camp at Nalagarh, H.P. (hereinafter referred to as ''the Tribunal'') in Claim Petition No. 12NL/2 of 2009, titled as Smt. Shiv Rajia & others v. Shri Munish Kumar & another, whereby compensation to the tune of 6,38,000/- with interest at the rate of 7.5% per annum from the date of filing of the claim petition, came to be granted in favour of the claimants and the appellant-insurer was saddled with liability (for short, "the impugned award").

3. The claimants and insured-owner-cum-driver have not questioned the impugned award, on any count. Thus, it has attained finality, so far it relates to them.

4. The insurer has questioned the impugned award on the grounds taken in the

memo of appeal.

5. Learned Counsel for the appellant-insurer argued that the factum of insurance is admitted and insurer is liable to pay the compensation, but the Tribunal has fallen in an error in assessing the compensation and applying the multiplier.

6. The claimants have specifically pleaded in para-6 of the claim petition that deceased was earning Rs. 4,500/- per month and as per the copy of Pariwar Register (Ext. P-A), his age was 47 years at the time of accident.

7. Accordingly, I deem it proper to hold that the monthly income of the deceased was Rs. 4,500/-.

8. ?rd is required to be deducted towards the personal expenses of the deceased, while keeping in view the ratio laid down by the Apex Court in Sarla Verma (Smt.) and others v. Delhi Transport and others Delhi Transport Corporation and another, reported in AIR 2009 SC 3104, upheld by a larger Bench of the Apex Court in a case titled as Reshma Kumari & others v. Madan Mohan and another, reported in 2013 AIR (SCW) 3120. Accordingly, after deducting ?rd amount, it is held that the claimants have lost source of dependency to the tune of Rs. 3,000/- per month.

9. The Tribunal has fallen in an error in applying the multiplier of ''14''. The multiplier of ''12'' was applicable in this case, in view of the 2nd Schedule appended to the Motor Vehicles Act read with the ratio laid down by the Apex Court in view of the judgments, supra and the judgment rendered by the Apex Court in case titled as Munna Lal Jain & another v. Vipin Kumar Sharma & others, reported in 2015 AIR SCW 3105.

10. Thus, the claimants are held entitled to compensation to the tune of Rs. 3,000 x 12 x 12 = Rs. 4,32,000/- under the head ''loss of dependency''.

11. The compensation amount awarded by the Tribunal under the other heads is not challenged. Accordingly, the amount awarded under the other heads is maintained.

12. Accordingly, the claimants are held entitled to total compensation under the following heads:

1

Loss of dependency

Rs. 4,32,000/-

2

Loss of consortium

Rs. 25,000/-

3

Loss of love and affection and funeral expenses

Rs. 25,000/-

Total:

Rs. 4,82,000/-

13. The aforesaid amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition.

14. The Registry is directed to release the entire amount in favour of the claimants, strictly in terms of conditions contained in the impugned award, through payees account cheque or by depositing the same in their accounts.

15. The excess amount, if any, be refunded in favour of the appellant-insurer through payees'' account cheque.

16. Accordingly, the impugned award is modified and the appeal is disposed of.