(2021) 02 SHI CK 0260

In the High Court Of Himachal Pradesh

Case No : First Appeal Order No. 379 Of 2015

Shriram General Insurance Company Ltd APPELLANT

Vs

Vijay Laxmi And Others RESPONDENT

Date of Decision : 24-02-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2021) 02 SHI CK 0260

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Jagdish Thakur, Kamlesh Shandil, Rakesh Chauhan, Malay Kaushal

Final Decision : Partly Allowed

Judgement

,,

Vivek Singh Thakur, J",,

1. This appeal has been preferred by Insurance Company against award passed by Motor Accident Claims Tribunal, Shimla (in short â??MACTâ??),",,

whereby MACT has awarded compensation for a sum of Rs.13,38,500/- along with interest thereon @ 7.5% per annum from the date of filing of",,

claim petition till realization of whole amount, to be payable by appellant/ Insurance Company to respondent No.1 and her children as apportioned in the",,

impugned award.,,

2. I have heard learned counsel for contesting parties and have also gone through record.,,

3. First issue raised by learned counsel for appellant is that addition of 15% of income of deceased in his income for the purpose of determining,,

amount of compensation is wrong particularly in view of ratio of pronouncement of Apex Court in National Insurance Company Limited vs. Pranay,,

Sethi, reported in 2017(4) ACJ 2700: AIR 2017 SC 5157: (2017)16SCC 680, reiterated in Civil Appeal No 2705 of 2020 titled United India Insurance",,

Co. Ltd. vs. Satinder Kaur and others decided on 30th June, 2020. It is contended that in view of above referred judgments of the Supreme Court",,

coupled with facts of present case, only 10% of the income could have been added for the purpose of calculation of amount of compensation payable.",,

4 On aforesaid issue, the Supreme Court in Pranay Sethiâ??s case has concluded as under:-",,

â??59. In view of the aforesaid analysis, we proceed to record our conclusions:-",,

59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased",,

had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of deceased was between 40 to 50",,

years. In case, the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less",,

tax.,,

59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the",,

deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the,,

deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the,,

income minus the tax componentâ?¦.â??,,

5. In present case age of deceased in claim petition has been mentioned as 51 years. PW1 claimant/respondent No.1, in her statement, has stated the",,

age of her husband as 50 years, whereas in postmortem report, age of deceased has been recorded as 52 years. In driving licence of deceased, his",,

date of birth has been recorded as 3.11.1960. Accident had taken place on 2.11.2012. Therefore, on the day of accident, according to date of birth",,

recorded in driving licence, deceased had 11 days short to complete 52 years. In any case, age of deceased was above 50 which is in the age group of",,

50 to 60 years.,,

6. It has come in evidence of PW3 Narender Singh that except for some period in the year 2011, he had engaged the deceased in casual manner and",,

it is also proved on record by claimant/respondent No.1 that deceased was earning his livelihood as a driver as well as tourist guide. Therefore,",,

deceased was not having permanent job, but, was self employed and during his regular engagement as driver, his employer was giving him a fixed",,

salary.,,

7. In aforesaid facts and circumstances, applying dictum of para 59.4 of Pranay Sethiâ??s case supra, only 10% of established income should be",,

added in income of deceased for computation of compensation. Therefore, on this count, impugned award deserves to be modified.",,

8. Second issue raised on behalf of appellant is that award of Rs.50,000/- each for loss of estate and funeral expenses and award of Rs.1 lac for loss",,

of consortium to claimant is also contrary to pronouncements of the Supreme Court in cases of Pranay Sethi and Satinder Kaur (referred supra). It is,,

contended that in view of these pronouncements, respondent No.1/claimant is entitled for Rs.15,000/- each for loss of estate and funeral expenses and",,

Rs.40,000/- for loss of consortium and therefore, amount awarded against these heads also deserves to be interfered with and modified.",,

9. On this issue, the conclusion of Constitutional Bench of Supreme Court in Pranay Sethiâ??s case is as under:-",,

â??59.8 Reasonable figures on conventional head, namely loss of estate, loss of consortium and funeral expenses should be Rs.15,000/ - , Rs.40,000/-",,

and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.â??",,

10. As evident, in para 59.8 of Pranay Sethiâ??s case, quantum of amount for loss of estate, loss of consortium and funeral expenses was",,

determined as Rs.15,000/-, Rs.40,000/-and Rs.15,000/- with observations that it should be enhanced at the rate of 10% after every three years.",,

Judgment in Pranay Sethiâ??s case was pronounced on 31st October, 2017. Therefore, amount against the heads of loss of estate, loss of consortium",,

and funeral expenses is to be enhanced at the rate of 10% after 31st October, 2020. As such, today, the claimant/respondent No.1 is entitled for loss",,

of estate, loss of consortium and funeral expenses at the rate of Rs.16,500/-, Rs.44,000/- and Rs.16,500/-respectively and award deserves to be",,

modified accordingly on this count.,,

11. Third point agitated on behalf of appellant is that in absence of any

documentary proof of income of deceased, the income is to be taken on the",,

basis of minimum wages prevalent at the time of accident. In support of this contention, pronouncement of Apex Court in Govind Yadav vs. New",,

Indian Assurance Company Limited reported in 2012(1) ACJ 28, 2008(2), Pappi Devi vs. Kali Ram and others reported in Latest HLJ 1440 (HP)",,

along with judgments of this High Court dated 4.5.2017 in FAO No. 488 of 2016 titled Mast Ram vs. Yogesh Azta and others, dated 23.4.2018 in",,

FAO No. 43 of 2018 titled Reliance General Insurance Company Limited vs. Ishwar Singh and dated 30.5.2019 in FAO No. 9 of 2019 in FAO No. 9,,

of 2019 titled ICICI Lombard vs. Kala Devi and others have been referred and during course of arguments, learned counsel for appellant has also",,

produced a print out of downloaded notification of minimum wages in Himachal Pradesh as notified w.e.f. September 01, 2012 and has submitted that",,

in present case, there is no documentary proof on record to establish the income of deceased and claimant as well as employer PW3 Narender Singh",,

have failed to produce any document on record including income tax returns of PW3 to establish the payment of wages to the deceased at the rate of,,

Rs.8000/- per month plus expenses Rs.100/- per day. It is canvassed that for absence of any documentary proof of income of deceased, in view of",,

above referred pronouncements of Courts, income of deceased is to be taken on basis of notification specifying the minimum wages at the relevant",,

time and as per notification produced by him, for employee in Public Motor Transport, maximum daily wages for highly skilled employee was",,

Rs.212.22 and thus, even by taking lenient view, the highest wages of deceased can be taken as 212.22X30 per month and it is also contended that in",,

spite of aforesaid, MACT has taken minimum wages of deceased at Rs.10,000/-, which deserves to be interfered with and amount of compensation",,

deserves to be calculated on the basis of minimum wages as notified for relevant time, referred supra.",,

i),Income,Rs.8000/- per month

ii),Annual income (8000 X 12),"Rs.96,000/- per annum

iii),"Future Prospects (Addition of

10%)","(+) Rs.9,600/-

iv),"Amount with addition of future

prospects Rs.9600/-+Rs.96,000/-","Rs.1,05,600/-

iv),"Deduction towards personal

expenses (1/3rd)","Rs.1,05,600 â?" Rs.35,200

Rs.70,400/-

v),Multiplicand,"Rs.70,400/-

vi),"Multiplier (Age between 50 to 60

years)",11

vii),Loss of Dependency,"Rs.7,74,400/

viii),Loss of Estate payable to wife,"Rs. 16,500/-

ix),Funeral expenses payable to wife,"Rs. 16,500/-

x),"Loss of spousal Consortium

payable to wife/ respondent

No.1/claimant","Rs. 44,000/-

Total compensation,,

