IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO NO. 7002 of 2011
Date of order: 31.07.2013

ICICI Lombard General Insurance Co. Ltd.

..... Appellant

Versus

Smt. Daropati and ors. .... Respondents

CORAM: HON'BLE MR. JUSTICE VIJENDER SINGH MALIK

Present: Mr. Subhash Goyal, Advocate
for the appellant.

Mr. Rajesh Kumar, Advocate
for respondents No.1 to 3.

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Vijender Singh Malik, J.

This is an appeal brought by ICICI Lombard General Insurance Co. Ltd., the insurer against the award dated 09.05.2011 passed by learned Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal'), vide which a sum of Rs.8,78,000/- has been allowed as compensation with interest @ 9% per annum from the date of filing the petition till the date of realization thereof.

Smt. Daropati and two others brought a claim petition under section 166 of the Motor Vehicles Act, 1988 seeking compensation in a sum of Rs.20,00,000/- on the death of Raj Kumar Vatrana in a road side accident that took place on 22.05.2009.

On 22.05.2009 Raj Kumar Vatrana, since deceased was going from Rajpura to Chandigarh by driving his Santro car bearing registration No. PB-11AD-6035. He was on left side of the road and was driving his car at a moderate speed. At about 6.00 PM when he was on Rajpura-Banur road, a Tata 407 bearing registration No. PB-32-G-3754 came from the opposite side at a very high speed. It was driven by Mohamad Hussain, respondent No.1. Tata 407 was coming at a very high speed and in a rash and negligent manner. Noticing the manner, in which Tata 407 was coming, Raj Kumar Vatrana brought his car on katcha berm. However, Tata 407 had still hit the car of the deceased, in which he suffered injuries and died at the spot. Raj Kumar Vatrana was aged 53 years. He was proprietor of M/s Vatrana Glass House, Rajpura. He was an income tax assessee having a monthly income of Rs.12,000/-. Claiming the claimants to be dependents of the deceased, a sum of Rs.20,00,000/- is claimed as compensation.

The claim petition is resisted by the respondents. They have denied the accident to have occurred in the manner alleged by the claimants. They have denied the claimants to be entitled to the amount of Rs.20,00,000/- as compensation.

Learned Tribunal assessed the income of the deceased at Rs.1,18,000/- per annum. Taking out the mean of the two sums in which he filed his income tax return for the assessment years 2008-09 and 2009-10. Learned Tribunal has assessed the dependency of the claimants at 1/3rd of the said income in a sum of Rs.78000/-. She then adopted the multiplier of 11 holding the age of the deceased at 54 years and consequently assessed a sum of Rs.8,58,000/- as lost by the claimants in the death of Raj Kumar Vatrana . Adding to it, a sum of Rs.20,000/- in the name of loss of estate, loss of consortium and expenses on last rites, a sum of Rs.8,78,000/- has been assessed as compensation in favour of the claimants.

Learned counsel for the appellant has submitted that one of the returns of the deceased had been filed after his death. According to him, in that return care could be taken to inflate the income so as to make a claim for a big amount as compensation. He has further submitted that in this way, the last return could not be taken into account. He has further submitted that out of three claimants, two are major sons of the deceased. According to him,

one son is not only major but is married also and he is not dependent of the deceased. He has further submitted that in these circumstances, the cut of ½ should have been applied to the income of the deceased to assess the compensation.

Learned counsel for respondents No. 1 to 3, on the other hand, has submitted that all the claimants had been dependents on the deceased. According to him, though the sons had grown up in age yet they were still dependent on their father. According to him, nothing has come on record to prove that anyone of them had become independent. He has further submitted that had there been an effort on the part of the claimants to inflate the income of the deceased so as to sustain a big claim, the income must have been inflated to a great extent. According to him, the income as per the return for the assessment year 2008-09 is Rs.1,10,220/- while as per the return for the year 2009-10 it is Rs.1,26,000/- . He has further submitted that therefore no element which is fictitious is there in the return for the year 2009-10.

I agree with learned counsel for respondents No. 1 to 3 in his submission that in the return for the assessment year 2009-10 no amount is added fictitiously to sustain a big claim. In the year 2008-09 the income returned is Rs.1,10,220/- and the only addition is of less than Rs.16,000/- in the next return. This much can be

expected to be the increase in the profit in a year. Therefore, I do not find any reason to say that the Tribunal has been wrong in taking the mean of the two returns as income of the deceased.

It is true that the claimants are widow and two sons of the deceased. The age of the sons is shown to be 28 and 27 years. At this age, normally a person is settled in life and becomes independent. However, this cannot be the there in every case. The claimants have claimed that they were dependent on the deceased and this fact is not denied by the respondents in their written statement. In these circumstances, I take the sons to be the dependents of the deceased and take the deduction made at 1/3rd of the income towards the expenses of the deceased on himself to be justified.

In these circumstances, submissions of learned counsel for the appellant on both counts are not acceptable. Therefore, I find no merit in the appeal and dismiss the same.

(VIJENDER SINGH MALIK)
JUDGE

31.07.2013
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