

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 408 of 2018.

Reserved on : 27th May, 2019.

Decided on : 28th June, 2019.

Royal Sunderam Alliance Insurance Company Ltd.

.....Appellant.

Versus

Smt. Mukandra Devi and others

....Respondents.

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the Appellant: Mr. Virender Sharma, Advocate.
For Respondents No. 1 & 2: Mr. Anirudh Sharma, Advocate.
For Respondents No. 3 & 4: Mr. Rakesh Chaudhary,
Advocate vice Mr. Ravinder Thakur,
Advocate.

Sureshwar Thakur, Judge.

The Insurer of the offending vehicle, has, instituted the instant appeal before this Court, wherethrough, it, casts, a, challenge, upon, the award pronounced by the learned Motor Accident Claims Tribunal-I, Solan, H.P., upon, MAC Petition No. 29-s/2 OF

¹ Whether reporters of the local papers may be allowed to see the judgment?

...2...

2015 (i) whereunder compensation amount, embodied, in a sum of Rs.14,11,000/- alongwith interest accrued thereon, at the rate of 6% per annum, and, commencing from, the date of petition till realization thereof, hence stood, assessed, vis-a-vis, claimants No.1 and 2, (ii) and, the apposite indemnificatory liability thereof, was, fastened upon the insurer/appellant herein.

2. The learned counsel appearing, for the insurer, has contested, the returning of affirmative findings, upon, issue No.1, and, has also contested, the, returning of disaffirmative findings, upon, issue No.4, (a) and, his afore contest(s), has also, facilitated him, to make a further submission, before this Court, (b) that thereupon the impugned award is vitiated, as, assumingly, upon, the compensation amount determined under the impugned award, being maintained by this Court, (c) nonetheless, only upon, the joinder of the owner, driver and the insurer of Innova car bearing No. DL-1YV-8580,

...3...

would rather facilitate the rendition, of, befitting findings, vis-a-vis, the afore purported co-tortfeasor, in the relevant mishap, (d) and, would also bring requisite enablements, for, proportionately fastening hence the apposite indemnificatory liabilities, upon, the insurer of the offending vehicle, and, upon the insurer of the Innova Car bearing No. DL-1YV-8580, (e) whereas, the afore want of, the afore legitimate recourings, defacilitate the making, of the afore rendition.

3. However, the afore submission addressed before this Court, by the learned counsel, appearing for the insurer/appellant, is rudderless, (i) as it is not founded upon any credible evidence, existing on record, (ii) rather with PW-2 making an uncorroborated testification, qua in pursuance, to the lodging, of, the apposite FIR, carrying therein ascriptions, vis-a-vis, the driver of the offending vehicle, being rash, and, negligent in driving it, (iii) thereupon, with his being the sole tortfeasor, (iv) and,

...4...

when he further testifies that after completion of the investigation(s), a report under Section 173 of the Cr. P. C., standing filed rather exclusively against respondent No.3 herein, does cumulatively, beget an invincible inference, conspicuously also when credible ocular account, vis-a-vis, the afore propagation, of the counsel for the insurer, is also not existing on record, rather reiteratedly qua the afore espousal being raised surmisally, and, it being not embedded, on any assured or firm evidentiary material hence existing on record.

4. Be that as it may, the learned counsel appearing for the insurer, has also contended, that (a) the assessment made by the learned tribunal qua the deceased, from his purported avocation, of, his assisting, his father in agriculture and horticulture pursuits, and, from his rendering tuitions to students, hence, rearing, a, per mensem salary of Rs.12,000/-, is, an exercise based upon conjectures, and, requires interference. However,

...5...

the afore submission also falters, as, the father of the deceased, while stepping into the witness box, and, during course whereof, he tendered into evidence, his affidavit, rather therein his making clear underlinings qua the deceased, as apparent from Ex.PW1/C, to Ex.PW1/G, hence, possessing a masters degree in Physics, (b) and, also a B.Ed. Degree and thereonwards also his making echoings qua his son assisting him, in performing horticulture, and, agriculture pursuits, and, wherefrom, he has testified qua his rearing, an, income of Rs. Two lakhs. Even though, he has further testified, that, his deceased son, also rearing incomes from his imparting tuitions, to students, and, when all the afore testimonies, have, withstood the rigour of an exacting cross-examination, (c) thereupon, even when the students/wards, wheretowhom the deceased imparted tuitions or their respective parents, omitted to hence step into the witness box, to succor, the afore testification, (d)

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however, wants of theirs hence stepping into the witness box, rather would not render the afore evidence, being discardable, given all the afore testifications, remaining uneroded, vis-a-vis, their vigour, for, wants, of any apposite rebuttal evidence thereto rather being adduced by the respondent, (e) hence, bearing in mind the afore factum, and, also bearing in mind qua the father of the deceased being deprived of assistance(s) being meted to him by his son, in his performing, both agricultural, and, horticultural pursuits, (f) and, when hence he would be required to engage labourers, for assisting him, thereupon, the afore loss of services, to the father of the deceased, is also required to be re-recompensed. However, since, the claimants, have not filed any appeal, before this Court, seeking enhancement of compensation nor they have preferred cross-objections, (g) hence, bearing in mind, the afore unfoldments, and, more precisely the factum of the deceased, being well

...7...

qualified, and, his qualification, empowering him, to obtain, a, befitting adequately remunerative employment, hence, the quantification, in the impugned award, vis-a-vis, the income of the deceased, hence computed in a sum of Rs.12,000/-, rather cannot be construed to be not firmly bedrocked, upon, any hard evidentiary material nor it is interferable.

5. Be that as it may, even if, the claimants, have not instituted any appeal against the impugned award, nor preferred any cross-objections, within, the instant appeal, yet the afore omission would not cast any bar upon this Court against its granting, in consonance with the verdict of the Hon'ble Apex Court, rendered in a case titled as ***National Insurance Co. Ltd. vs. Pranay Sethi and others***, reported in ***2017 ACJ 2700***, future hikes, upon the per mensem income adjudged by the learned tribunal, and, borne in a sum of Rs.12,000/-, given it standing mandated therein, qua the, awarding(s), of,

...8...

future incremental hikes, vis-a-vis, a deceased engaged, in non governmental sector or being self employed, as, the deceased visibly hereat stood engaged, and, also the age of the deceased, being the requisite parameter. Since the postmortem report reflects, the deceased being aged 24 years, at the relevant time, hence within, the, ambit, of, verdict of the Hon'ble Apex Court rendered in Pranay Sethi's case (supra), and, when, it reiteratedly stands mandated therein, qua accretions towards future incremental prospects, vis-a-vis, the assessed income of, a self-employed deceased, as, the deceased hereat candidly was, being pegged upto 40% thereof, besides being tenably meteable, vis-a-vis, the apposite assessed per mensem income. Consequently, after meteing 40% increase(s), vis-a-vis, the apposite assessed per mensem income, thereupon, the relevant per mensem income, of, the deceased, is, reckonable to be Rs.16,800/-, [Rs.12,000/-(per mensem assessed income of the

...9...

deceased)+Rs.48,00/-[40% of the last drawn salary). Significantly, the deceased was a bachelor, hence, 50% deduction, is to be visited, upon, a sum of Rs.16,800/-, hence, after making, the, apt aforesaid deduction, vis-a-vis, the afore sum, the per mensem dependency, comes to Rs.8,400/-. In sequel whereto, the annual dependency, of the dependents, upon, the income of the deceased, is computed, at $\text{Rs.8,400/-} \times 12 = \text{Rs.1,00,800/-}$. After applying thereto, the apposite multiplier of 18, the total compensation amount, is assessed in a sum of $\text{Rs.1,00,800/-} \times 18 = \text{Rs.18,14,400/-}$ (Rs. Eighteen lakhs, fourteen thousand, four hundred only).

6. However, the quantification, of damages, by the learned Tribunal in a sum of Rs.1 lacs vis-a-vis, the claimants, under the head, “ loss of love and affection” 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, only

...10...

under conventional heads, namely, loss to estate, and, funeral expenses, being quantified, only upto Rs.15,000/-, and Rs.15,000/- respectively. Consequently, the award of the learned tribunal is interfered, to the extent aforesaid, of, its determining compensation, under, the aforesaid heads vis-a-vis the claimants. Accordingly, in addition to the aforesaid amount of Rs.18,14,400/-, the claimants, are, entitled under conventional heads, namely, loss to estate, and, funeral expenses, sums of Rs.15,000/-, and Rs.15,000/- respectively, as such, the total compensation to which the claimants are entitled comes to Rs.18,14,400 + Rs.15,000/- + Rs.15,000/- = Rs.18,44,400/- (Rs. Eighteen lakhs, forty four thousand, four hundred only).

7. For the foregoing reasons, the appeal filed by the insurer is dismissed, however, the impugned award, is, in the aforesaid manner, hence modified. Accordingly, the petitioners/claimants/respondents No.1 and 2, are,

...11...

held entitled to a total compensation of Rs.18,44,400/- (Rs. Eighteen lakhs, forty four thousand, four hundred only), along with interest @ 6 % per annum, from, the date of petition till the date, of, deposit, of the compensation amount. The indemnificatory liability, vis-a-vis, compensation amount shall be borne by the insurer of the offending vehicle, i.e. appellant herein. The afore amount of compensation be apportioned amongst the claimants/respondents No.1 and 2 herein, in the manner as ordered, by the learned tribunal. The amount of interim compensation, if awarded, be adjusted in the aforesaid compensation amount, at the time of final payment. All pending applications also stand disposed of. Records be sent back forthwith.

**28th June, 2019
(jai)**

**(Sureshwar Thakur)
Judge.**