202 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

FAO-6396-2012 (O&M)
Date of decision : 27.02.2016

The Oriental Insurance Company Limited

..... Appellant

versus

Smt. Premwati and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. D.P.Gupta, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No.1.

None for respondent No.2.

***

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed against the award of compensation to respondent No.1-claimant. The Tribunal took the monthly income of the deceased as Rs.15,312/- and after deducting half thereof towards personal needs the annual dependency was fixed at Rs.91,872/-. The deceased was 55 years of age, therefore, multiplier of 11 was applied and the total amount was assessed at Rs.10,10,592/-. An additional sum of Rs.10,000/- was awarded towards funeral expenses. In total a sum of Rs.10,20,592/- was awarded alongwith interest @ 7.50% per annum from the date of filing of

::: Downloaded on - 14-07-2017 08:51:22 :::

the petition till its realization. All the respondents were jointly and severally liable to compensate the claims. 50% of the compensation was ordered to be paid in cash to the claimant while the remaining amount was ordered to be deposited in FDR.

The brief facts are that the deceased was travelling as a pillion rider on a motorcycle driven and owned by his son, Sri Pal-respondent No.2 and he died as a result of an accident caused by the rash and negligent driving of the respondent No.2 and unknown vehicle.

The first argument of learned counsel for the appellant is that the claim petition itself was not maintainable since the death was caused as a result of the negligence of one of the legal representatives itself . In this connection he has relied upon the case in the matter of ***New India Assurance Co. Ltd. Vs. Dr. Sandeep Dhar and others***, CIMA No.219-1998 decided on 03.09.2007 passed by the Ld. Single Judge of Jammu and Kashmir High Court, wherein it has been held as follows :-

> "*21. In view of the legal position, the claim petition has to be entertained on behalf of all the legal representatives of the deceased, who are entitled for compensation under the Act. Where all the legal representatives of the deceased have not joined, then the petition can be made on behalf of any of the legal representatives of the deceased by impleading those legal representatives who have not joined in filing the claim petition, as respondents. But the claim petition will be deemed to have been filed on behalf of all the legal representatives. In case one of the legal representatives is debarred to claim compensation because the death of the deceased has occurred due to his act, then all the legal representatives are not entitled to claim the compensation under Section 166 of the Act*

::: Downloaded on - 14-07-2017 08:51:23 :::

because it is the mandate of law that the petition can only be filed by all the legal representatives and either they will have to be impleaded as claimants or proforma respondents but it will be for the benefit of all the legal representatives."

Learned counsel for the appellant has further argued that in the alternative that even if it is held that the petition is maintainable yet out of the total compensation which has to be awarded that amount which falls to the share of the tort-feasor would have to be deducted, more so since the appellant-Insurance Company under the contract of Insurance has to indemnify the owner (in this case the tort-feasor) himself and if this award is allowed the stand of the appellant-insurance company would end up enriching the tort-feasor for his own action because even his share of the compensation would ultimately be paid by the insurer. Further in view of the provisions of Section 166 of the Act one of the several decree holders would be the principle judgment debter.

Learned counsel for the respondent No.1 has however countered by relying upon the decision of a Division Bench of the Kerala High Court in ***New India Assurance Company Limited Vs. Ayisha, 2011 (3) KLT 319*** wherein it was held as follows :-

"4. The legal question that has been raised by the appellant Insurance Company is rather novel. It is contended by the appellant that the father of the two victims being the tort feasor himself, and he also being one of the legal representatives of the deceased victims, the tribunal ought to have deducted his share from the amount of compensation payable to the claimants.

7. Before we deal with the above contention, it is pertinent to note that the mother and the other siblings of the

::: Downloaded on - 14-07-2017 08:51:23 :::

deceased minor victims, have claimed compensation for the loss or damage sustained by them due to the death of the two victims. In other words, they have not claimed compensation for and on behalf of or for the benefit of the other legal representative, who obviously is the father. Of course, has been mentioned earlier, the father who was unfortunately driving the vehicle was on the party array before the Tribunal as respondent No.2. It is true that he did not stake any claim for a share in the compensation which may ultimately have been awarded. The said allegation against him was that the accident occurred due to his negligence. Of course, he denied the said allegation. Nevertheless, the Tribunal found that the accident occurred because of his rash and negligent driving. Since there was a valid policy in respect of the vehicle, the Tribunal mulcted the Insurance Company with the liability to pay the compensation.

8. The contention of the learned counsel for the appellant is that the father of the two victims himself is the tort feasor. Even if he has not claimed any compensation on his own, either by filing a separate petition or in the same proceedings in which he is a party, it has to be deemed that he would also been titled to get his share in the amount of compensation awarded by the Tribunal. Learned counsel contends that the proportionate share that the father may get under the personal law has to be necessarily deducted and the claimants ought to be paid only the remaining portion of the award. We are unable to agree.

9. It is true that the proviso to sub-section (1) of Section 166 of the Act postulates that application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased where death has resulted from the accident. This is obviously to avoid multiplicity of litigation. The claimants in these two cases have

::: Downloaded on - 14-07-2017 08:51:23 :::

sought compensation for the loss sustained by them due to the death of their dear ones. Sub. (c) of sub-section (1) enables any or all of the legal representatives of the deceased to institute a claim petition. We hasten to add that we are not oblivious of the proviso to sub-section (1). The said proviso of course mandates that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased and those legal representatives who have not so joined shall be impleaded as respondents to the application.

10. In the case on hand, the remaining legal representative namely the father of the deceased victims, was on the party array. As has been noticed already, he did not claim share in the compensation. If in fact, he wanted a share in the amount of compensation, nothing precluded or prevented him from making such a claim. Since he has not staked any such claim, it cannot be said that it shall be presumed or deemed that the award passed by the Tribunal includes his share as well. Such an assumption is too far fetched and wholly hypothetical, to say the least. More importantly, the appellant did not raise such a contention before the Tribunal. Even assuming the award includes the share of respondent No.4, the father of the victims, we are unable to accept the above contention in view of the scheme enunciated in Chapter XI of the Act. In any view of the matter, we do not find any merit in the contentions raised by the appellant.

The appeals fail and they are accordingly dismissed."

Learned counsel for the respondent No.1 has further relied upon the judgment of the Madras High Court in ***New India Assurance Company Limited Vs. K.Jothilingam and others*** reported as 2011 ACJ 333

::: Downloaded on - 14-07-2017 08:51:23 :::

wherein it was held as follows :-

> "*22. The other point that was raised by the insurance company is whether it was not against public policy for the tortfeasor to make the claim and whether when it was the husband of the deceased who by his rash and negligent driving had caused the accident, he can claim compensation. We agree that the husband of the deceased being the tortfeasor cannot reward himself. But the other claimants are undoubtedly entitled to be compensated. The claim for compensation was made not only by the husband of the deceased, but also by the child as well as parents of the deceased. Perhaps, the claim ought to have been made by the minor child represented by her grandparents showing her father as respondent No.1. But as it happened, the husband of the deceased was the claimant No.1. Now in the appeal stage, a petition has been filed for transposing the claimant No.1 as respondent No.3 which we have ordered today. We did so because as far as the minor daughter and parents of the deceased, they are entitled to make a claim. The death occurred on account of rash and negligent driving of the husband and the child, a third party who lost her mother on account of rash and negligent driving of her father cannot be denied her compensation. The objection had been rectified at the appeal stage by the petition seeking transposition of claimant No.1 as respondent No.1.*
>
> *26. The respondent No.1, husband, Jothilingam will not receive any amount from the award amount. So his 15 per cent will be added to the minor's share. So the compensation amount will be awarded in the following ratio :*
>
> *"5 per cent to the father of the deceased; 15 per cent to the mother of the deceased and the remaining 80 per cent will go to the minor."*

::: Downloaded on - 14-07-2017 08:51:23 :::

> *The minor's share will be invested in any nationalized bank under the Fixed Deposit Reinvestment Scheme. Respondent No.1 will not be entitled to withdraw any interest. We find from the award that he is a very affluent person, the daughter shall be taken care of by him and it is not necessary to withdraw this amount for her expenditure."*
>
> *27. The appellant had deposited only 50 per cent of the award as a condition for grant of stay. Claimant No.1, the husband who is now transposed as respondent, had withdrawn 50 per cent of what he was awarded, i.e. 15 per cent of the awarded amount. He is the tortfeasor and he ought not to have taken the money. Therefore, in accordance with law of equity he has to refund the amount to the appellant. Instead the appellant shall deposit the balance amount less what was withdrawn by respondent No.1. To explain, the appellant is bound to deposit a sum of Rs.18,88,060. But since they have already deposited 50 per cent of the original award, it has to deposit the remaining 50 per cent of the award amount deducting the amount with-drawn by respondent No.1. It has to be noted that the amount which has been withdrawn by respondent No.1 must be insisted by the Tribunal to be deposited by him in the name of his daughter."*

In my opinion, both these judgments present contrary views but none of them gives any reasons which may have prevailed with the learned Judge/s for having taken that particular view. However, in both the judgments cited by the learned counsel for the respondent No.1-claimant it has been categorically accepted that the tort-feasor can not benefit from his own wrong. Even otherwise this is an obvious principle. To my mind the logical extension of this principle can only be that in a case like the present the share which the tort-feasor may otherwise have in the

::: Downloaded on - 14-07-2017 08:51:23 :::

compensation amount would have to be deducted. In this way a judicious balance can be drawn between the two extreme views that is one of the Jammu & Kashmir High Court holding that a petition at all would not be maintainable if one of the legal representatives is a tort-feasor and the views of the Kerala High Court and the Madras High Court wherein it has been held that even though the tort-feasor himself may not be entitled to any compensation yet his share would be handed over to the other legal representative.

Learned counsel for the respondent No.1-claimant has further argued that future prospects should also be added in the income of the deceased. Learned counsel for the appellant has however argued that as per judgment passed by the Ho'ble Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298*****,** the claimant is not permitted for future prospects.

Learned counsel for the respondent No.1-claimant has argued that on the issue of future prospects in ***K.R.Madhusudan and others Vs. Administrative Officer and another*** decided on 18.02.2011 their lordships made a departure from Sarla Verma's case and held as follows :-

> *"9. In the Sarla Verma (supra) judgment the Court has held that there should be no addition to income for future prospects where the age of the deceased is more than 50 years. The learned Bench called it a rule of thumb and it was developed so as to avoid uncertanities in the outcomes of litigation. However, the Bench held that a departure can be made in rare and exceptional cases involving special circumstances. We are of the opinion that the rule of thumb evolved in Sarla Verma (supra)is to be applied to those cases*

::: Downloaded on - 14-07-2017 08:51:23 :::

where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.

10. The present case stands on different factual basis where there is clear and incontrovertible evidence on record that the deceased was entitled and in fact bound to get a rise in income in the future, a fact which was corroborated by evidence on record. Thus, we are of the view that the present case comes within the 'exceptional circumstances' and not within the purview of rule of thumb laid down by the Sarla Verma (supra) judgment. Hence, even though the deceased was above 50 years of age, he shall be entitled to increase in income due to future prospects."

He has further argued that in this case also positive testimony had come and as per exhibit P-5 the salary evidence had come and on the date of death, his total take home salary was Rs.15312/- on basic pay of Rs.9240/- and on the date of retirement his basic pay would be Rs.11,430/-, as per which his total take home salary on the date of his retirement would be Rs.24,000/- approximately.

In the circumstances, in view of the judgment of K.R.Madhusudan's case (supra) the salary of the deceased is taken as Rs.24,000/-.

Learned counsel for respondent No.1-claimant urges that if the situation is that when there were two legal representatives and one was disentitled then the deduction for personal expenses could be 1/3rd and not half as laid down in ***Sarla Verma and others vs Delhi Transport***

::: Downloaded on - 14-07-2017 08:51:23 :::

Corporation and another, (2009) 6 SCC 12 and in the present case the Tribunal has erred in making a deduction of 50%.

I find weight in this argument and consequently held that while computing the compensation a deduction of 1/3rd should be made for calculating personal expesnes of the deceased and the amount which could be ultimately computed would be reduced by half and the half share would be payable to respondent No.1-claimant.

The third argument raised by the learned counsel for the appellant is that this was a case where split multiplier should have been allowed because the deceased was to retire in five years and has relied on a decision passed in FAO No.5250-2013 titled as ***Balbir Kaur Vs. Manjinder Singh and others*** decided on 11.12.2014 wherein this Court held as follows :-

> *"I have gone through the judgments referred to by the appellant. In Puttamma's case (supra) the Apex Court had held that in the absence of specific reason the Court should not apply the split multiplier. The Tribunal had given a specific reason that in the case of a Government employee, on retirement gets pension which is calculated at half of the last drawn salary and the remainder multiplier is worked out on the 50%. The compensation for the remaining period could not be treated as full salary period and has to be treated as the period during which the deceased would have received pension and no change can be made."*

Learned counsel for respondent No.1-claimant has argued that in this judgment the learned Single Judge has referred to the decision of the Hon'ble Supreme Court in ***Sri K.R.Madhusudhan and others vs.***

::: Downloaded on - 14-07-2017 08:51:23 :::

Administrative Officer and another, 2011 (2) RCR (Civil) 188 but has not considered the same. As per him, this judgment was prior to the judgment of ***Puttamma and others vs. K.L.Narayana Reddy and another***, 2014 (1) Recent Apex Judgments (R.A.J.) 1 and in this judgment also the Tribunal had not applied a split multiplier but the High Court had done so on the basis of the age of retirement of the deceased but the Hon'ble Supreme Court had held as follows :-

> *"14. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation, granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefore. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II Column in the II Schedule in the Motor Vehicles Act, and the Tribunal has not committed any error by accepting the said multiplier. This Court also fails to appreciate why the High Court chose to apply the multiplier of 6."*

The Hon'ble Supreme Court had specifically set aside that part and had maintained the order of the Tribunal granting multiplier as per Sarla Verma's case. In my opinion, in these circumstances the reliance placed on Balbir Kaur (Supra) is misplaced.

::: Downloaded on - 14-07-2017 08:51:23 :::

Resultantly the appeal is partly allowed. It is held that the compensation would be computed after taking the income at Rs.24,000/- and thereafter deducting personal expenses of 33% and thereafter half of the compensation amount would be awarded to respondent No.1-claimant. Rest of the award is maintained.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

27.02.2016
Pooja Sharma-I

HIGH COURT OF PUNJAB AND HARYANA
सत्यमेव जयते

::: Downloaded on - 14-07-2017 08:51:23 :::