

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3976 of 2015 (O&M)
Date of decision: 2.7.2015

National Insurance Company Ltd.

.. Appellant

v.

Sunita and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sandeep Suri, Advocate for the appellant.

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Rajesh Bindal J.

Challenge in the present appeal is to the award of the Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal'), whereby on account of motor vehicular accident, family of the deceased has been granted compensation.

In the case in hand, Mukesh, who was 42 years of age at the time of accident, died as a result of road accident on 13.2.2012. It was claimed that he was working as a mason as well as agriculturist earning about ₹ 15,000/- per month. The Tribunal, while assessing the monthly income at ₹ 4,800/- and adding 30% on account of future prospects and thereafter deducting 1/4th on account of personal expenses, adding compensation on account of loss of consortium and granting funeral expenses awarded total amount of compensation of ₹ 9,31,400/-. It is this award, which has been impugned by the Insurance Company.

Learned counsel for the appellant submitted that there is no material on record to show that death of Mukesh was on account of the accident in question. He died at home. There was no post-mortem report or medical evidence in support thereof. He further submitted that income of the

deceased has been taken without there being any evidence on record. Further, addition of 30% on account of future prospects was un-called for as the issue has been referred to larger Bench by Hon'ble the Supreme Court. He further submitted that there is calculation error in the amount of compensation awarded, as 30% of ₹ 4,800/- would come to ₹ 1,440/-, whereas the Tribunal has taken the same as ₹ 1,600/-, as a consequence of which there is a difference of ₹ 26,880/-.

After hearing learned counsel for the appellant, I do not find any merit in the submissions made. The fact that Mukesh suffered injuries in a road accident on 13.2.2012 is not in dispute. Immediately after the accident, he was taken to General Hospital, Bhiwani, where medico-legal report was prepared. On account of his serious condition, he was referred to PGIMS, Rohtak, where he remained admitted from 13.2.2012 to 23.2.2012. Thereafter, he was discharged and was advised for follow up in OPD, however, he died on 27.2.2012. As the death occurred at his residence in a village, no post-mortem was conducted. The same cannot be said to be fatal in the case in hand for the reason that family members of the deceased may not be knowing the intricacies of law to get his post-mortem conducted after his death. This is established from another fact that even the claim petition was filed more than 2-1/2 years after his death. Otherwise also, the link of death of Mukesh with the accident is quite evident from the material on record, namely, the accident on 13.2.2012, medico-legal examination in General Hospital, Bhiwani on the same day and reference of the case of PGIMS, Rohtak in critical condition, his admission in PGIMS, Rohtak from 13.2.2012 to 23.2.2012 and death on 27.2.2012, hence, the contention raised by learned counsel for the appellant is without any merit and rejected.

Even the other issue raised by learned counsel for the appellant is to be noticed and rejected. No doubt, the family of the deceased claimed that he was earning ₹ 15,000/- per month, but still the Tribunal has merely taken his income at ₹ 4,800/- per month, which was even less than the minimum wages of a skilled labourer at that time. He was maintaining a family of six persons including himself, hence, assessment of his monthly income by the Tribunal cannot be said to be on higher side.

As regards addition of 30% on account of future prospects is concerned, no doubt the matter has been referred to larger Bench by Hon'ble the Supreme Court, but learned counsel for the appellant has not referred to any judgment showing that earlier judgments on the issue are not to be followed till such time the reference is decided.

As regards calculation error in assessment of compensation is concerned, the total effect even as per the calculation made by learned counsel for the appellant is ₹ 26,880/-. The appellant, if so advised, can seek correction of the calculation error before the Tribunal only. For that, appeal cannot be entertained in this court as no legal issue as such is involved.

For the reasons mentioned above, I do not find any merit in the present appeal. The same is, accordingly, dismissed. Dismissal of present appeal will not have any bearing on the appeal, if any, filed by the claimants.

(Rajesh Bindal)
Judge

2.7.2015
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