960.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.745 of 2009 (O&M)
Date of decision:17.03.2016

National Insurance Company Limited ... Appellant

versus

Smt. Vidya and others .... Respondents

II. <u>FAO No.4284 of 2008</u> (O&M)

Smt. Vidya ... Appellant

versus

Bhim Singh and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.N. Singal, Advocate,
for the appellant in FAO No.745 of 2009 and
for respondent No.2 in FAO No.4284 of 2008.

Mr. B.K. Bagri, Advocate,
for the appellant in FAO No.4284 of 2008 and
for respondent No.1 in FAO No.745 of 2009.

Mr. Ishaan Bhardwaj, Advocate,
for Mr. Vijay Pal, Advocate,
for respondent No.2 in FAO No.745 of 2009 and
for respondent No.1 in FAO No.4284 of 2008.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The appeals by the Insurance Company and the claimants are as regards the issue of adequacy of compensation assessed for woman, aged 27 years, who had cervical injury and suffered 100% disability. She had been under treatment and a Medical Board constituted reported her disability to have resulted in 100%. A personal attendant gave evidence to the effect that she was being paid ₹4,000/- per month besides free food which was given to her. There was evidence that the woman held considerable extent of land as owner and it was stated that she was herself contributing an amount of ₹10,000/- towards income earned through agriculture. She had been in the hospital for 152 days in two different spells i.e. from 15.12.2006 to 06.04.2007 and again on 17.07.2007 to 29.09.2007 against the medical expenses said to have been incurred that totalled ₹9,87,250/-. The Tribunal scaled it down to ₹8,75,720/-. It provided ₹75,000/- for attendant charges, ₹1 lakh towards pain and suffering, ₹2 lakhs towards loss of amenities of life for disability caused and ₹3,40,000/- towards past and future earning.

2. I find the assessment made to be grossly inadequate considering the nature of injuries and the extent of disablement suffered. If the medical expenses incurred were shown to be ₹9,87,250/-, there was no reason for the Tribunal to scale it down and the entire expenses ought to have been provided. The provision

for attendant could not have been merely ₹50,000/- when she surely required round the clock attendant on her. There was evidence of the doctor that there was urinary incontinence and she had also no control over her bowels. If the woman had to be confined to bed and not in a position to be of any service for her family consisting of young husband and a son, the life was truly a harsh burden on her and she ought to have been provided with attendant charges for the rest of her life. ₹4,000/- which was claimed as attendant charges cannot be said to be high and I will factor the entire amount as the likely expenditure and apply a multiplier of 17 to provide a corpus that can return a sum which can help her to bear the expenses. I will, therefore, rework the compensation for attendant charges as ₹4,000/-x12x17. I will make a provision of increase towards special diet at ₹15,000/- and another ₹15,000/- towards transportation. I will retain the component of pain and suffering and the disability as assessed already by the Tribunal but as regards the loss of income, considering the evidence that she may not only be in a position to continue the service to the family but she has become burden on the family and that she cannot also attend the agricultural operations which was stated as resulting in a loss of ₹10,000/- every month, I will take a modest sum of ₹5,000/- as her own contribution for the family of her services and the income which she would have earned by her supervisory skills and apply a multiplier of 17 to take the loss of earning capacity at ₹10,20,000/- (5,000x12x17). There is no proper evidence given regarding the future medical expenses, but considering that she had incurred close to ₹10 lakhs in about 6 months of hospitalization, I would spread over the future expenses at an amount of ₹ 1 lakh. The various heads of claims are reworked as under:-

Date of accident:			
Age:			
Period of hospitalization: 17.07.2007 to 29.07.007 and 15.12.2006 to 06.04.2007			
Occupation & income :			
	Heads of Claim	Tribunal	High Court
Sr. No.		Amount ₹	Amount ₹
1.	Loss of income from to		
2.	Medical expenses:		
i)	Medicines	8,75,720	9,87,250
ii)	Hospital charges	75,000 @4,000 PM	
iii)	Attendant charges		8,16,000
iv	Special diet		15,000
v	Transportation		15,000
3.	Pain & suffering	1,00,000	1,00,000
4.	Disability (100%) & compensation	2,00,000	2,00,000
5.	Income as assessed by the Tribunal (a)		15,000 x 12
6.	% loss of earning capacity (b)		
7.	Multiplier (c)		17
8.	Loss of earning capacity (axbxc)	3,40,000	10,20,000
9.	Reduction in life expectancy		
10.	Loss of prospect of marriage		
11.	Future medical expenses		1,00,000
	Total	15,65,720	32,53,250

There shall be an award of ₹32,53,250/- and the additional amount over what has been awarded already by the Tribunal will attract interest at 7.5% from today considering the fact that most of the heads of claims are for future expenses to be spread over a time and, therefore, the interest will be only from the date when the enhancement is being made. The appeal filed by the Insurance Company in FAO No.745 of 2009 is dismissed and the appeal filed by the claimants in FAO No.4284 of 2008 is allowed to the above extent.

(K.KANNAN)
JUDGE

17.03.2016
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