IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No.1861 of 2012 (O&M) and
XOBJC-77-CII-2015 (O&M)
Date of decision :21.01.2016

ICICI Lombard General Insurance Company Ltd.

......Appellant

Versus

Raghav Bhardwaj and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Ninin Mittal, Advocate for
Mr. Subhash Goyal, Advocate for appellant.

Mr. Ashish Gupta, Advocate for
respondent No.1-cross objector.

None for respondent No.2.

Mr. Ayuwan Singh, AAG, Haryana, for respondent No.3.

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DARSHAN SINGH, J.

CM-10269-CII-2015 in
XOBJC-77-CII-2015 (O&M)

There is delay of 1099 days in filing the present cross objection. The cross-objector has filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

FAO No.1861 of 2012 (O&M) and
XOBJC-77-CII-2015 (O&M)

The present appeal has been preferred by appellant-Insurance Company against the award dated 25.01.2012 passed by learned Motor Accidents Claims Tribunal, Ambala (for short the Tribunal), vide which the claim petition filed by respondent No.1 Raghav Bhadwaj for grant of compensation on account of death of his mother in the motor vehicular accident which took place on 27.05.2010 was allowed and he was awarded the compensation to the tune of Rs.8,16,000/- along with interest @ 9% per annum. Respondent No.1-claimant has also filed the cross-objection for enhancement of the amount of compensation.

2. I have heard Mr. Ninin Mittal, Advocate learned counsel for the appellant, Mr. Ashish Gupta, Advocate, learned counsel for respondent No.1-cross objector, Mr. Ayuwan Singh, learned A.A.G., Haryana, for respondent No.3 and gone through the paper-book carefully.

3. Learned counsel for the appellant-Insurance Company contended that the learned Tribunal has not deducted any amount from the income of the deceased towards her living and personal expenses. The entire income of the deceased has been taken into consideration for computing the amount of compensation which is wrong. $1/3^{rd}$ of the income of the deceased should have been deducted towards her personal and living expenses and then the amount of compensation should have been worked out.

4. On the other hand, learned counsel for respondent No.1-cross objector claimant contended that only the notional income of the deceased was taken into consideration. So, there was no question of applying 1/3rd deduction. To support his contentions, he relied upon case ***Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others FAO No.3310 of 2012 decided on 16.5.2013*** by the Division Bench of this Court.

5. He further contended that the learned Tribunal has not awarded any amount of compensation to the claimant on account of loss of love and affection, funeral expenses and loss to estate. Thus, he contended that the amount of compensation awarded by the learned Tribunal is inadequate and deserves to be enhanced.

6. I have duly considered the aforesaid contentions.

7. The learned Tribunal has mentioned that the income of the deceased was not proved. The deceased was the mother of the claimant. Thus, virtually, the Tribunal has taken the notional income of the deceased at the rate of Rs.48,000/- per annum in order to workout the compensation. As only the notional income of the deceased has been taken by the Tribunal, so there was no question of applying 1/3rd cut towards her own living and personal expenses in view of the law laid down in case ***Paramjit Singh and another Vs. Dilbagh Singh alias Bagga and others*** (supra). Thus, the entire income of the deceased has rightly been taken into consideration by the learned Tribunal.

8. Consequently, the contentions raised by learned counsel for the appellant Insurance Company are without any substance.

9. The perusal of the impugned award shows that the learned Tribunal has not awarded any compensation to respondent no.1-cross objector towards loss of love and affection, transportation and funeral expenses and loss to estate. Respondent No.1 is certainly entitled for appropriate compensation under all these heads, which have been totally ignored by the learned Tribunal. Thus, respondent No.1-claimant shall be entitled to a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards transportation and funeral expenses and Rs.10,000/- towards loss to estate. So, there will be an increase of Rs.1,35,000/- over and above the amount of compensation awarded by the learned Tribunal.

10. Thus, keeping in view my aforesaid discussion, the appeal filed by the appellant-Insurance Company is dismissed and the cross objections filed by respondent No.1-claimant are allowed. The amount of compensation is enhanced by Rs.1,35,000/- raising the total amount of compensation/award to Rs.9,51,000/- instead of Rs.8,16,000/- as awarded by the learned Tribunal. The claimant shall be entitled to interest on the enhanced amount from the date of filing the petition till realization @ 9% per annum, the rate of interest as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

21.01.2016 **(DARSHAN SINGH)**
sunil yadav **JUDGE**