IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.12.2016

1. **FAO No. 4228 of 2013(O&M)**

ICICI Lombard General Insurance Co. Ltd. ….Appellant

VERSUS

Reeta Kumari @ Diya and others .....Respondents

Present: Mr. Subhash Goyal, Advocate for the appellant.

Ms. Ekta Thakur, Advocate for respondents No.1 to 4.

Mr. Subhash Chander, DAG, Haryana
for respondents No.6 and 7.

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2. **FAO No. 6337 of 2013(O&M)**

Reeta Kumari @ Diya and others ….Appellants

VERSUS

Satbir Singh and others .....Respondents

Present: Ms. Ekta Thakur, Advocate for the appellants.

Mr. Subhash Chander, DAG, Haryana for respondents No.2 and 3.

Mr. Subhash Goyal, Advocate for respondent No.4.

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.4228 and 6337 of 2013 as these have emerged out of the same award dated 15.03.2013 passed by the Motor Accidents Claims Tribunal, Chandigarh (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Neeraj Sharma in a motor vehicular accident that took place on 12.11.2008.

For assessment of income of the deceased, the Tribunal has relied upon Form No.16 (Ex.P31) for the assessment year 2009-10 pertaining to the period 01.04.2008 to 31.10.2008 wherein gross salary of the deceased for the aforesaid period is Rs.1,99,274/- and the tax deducted is Rs.3,648/-. It has been held that monthly salary minus tax for October 2008 comes to Rs.27,947/- and the annual salary would be Rs.3,35,359/-. By making addition of 50% with regard to future prospects, his annual income is assessed at Rs.5,03,038/-. Out of this amount, an amount of Rs.1,67,679/- has been deducted for personal and living expenses of the deceased, thus calculated annual dependency at Rs.3,35,359/-. After applying multiplier of 16, loss of dependency has been computed to the tune of Rs.53,65,744/-. In addition, an amount of Rs.5,000/- each for loss of estate and funeral expenses and Rs.10,000/- for loss of consortium to the widow has been allowed making total compensation to Rs.53,85,744/-.

The parties shall be referred to as 'the claimants' and the 'insurance company', for the sake of convenience.

The sole submission made by counsel for the insurance company is that widow of the deceased appeared in the witness box and marked pay slip for the month of October 2008 as Ex.P7. As per Ex.P7, gross pay of the deceased was Rs.23,216/- but the Tribunal has taken into consideration his monthly salary at Rs.27,947/-, therefore, compensation qua loss of dependency is liable to be reduced on the basis of Ex.P7.

Counsel for the claimants while refuting contention of counsel for the insurance company has submitted that widow of the deceased produced the document Ex.P7 on the basis of information obtained from the website of Whirlpool India Ltd., the company with which the deceased was working as a Senior Executive but the claimants examined Sanjay Kumar, Manager (HR) from the said company who produced on record various documents including Form No.16 in respect of salary of the deceased for the assessment year 2008-09 for the period 01.04.2007 to 31.03.2008 Ex.P28, Form No.16 for the financial year 2008-09 Ex.P29 and the last Form No.16 for the period 01.04.2008 to 31.10.2008 for the assessment year 2009-10 Ex.P31. It is vehemently argued that the witness was cross examined at length by counsel opposite but no such material fact has been brought on record in order to challenge correctness of his testimony and the documents produced on record. The witness was not confronted with the document Ex.P7 in order to seek necessary clarification qua the facts incorporated in Ex.P7 vis-à-vis the facts recorded in the documents brought by the witness. She has argued that the Tribunal has rightly relied upon the latest form No.16 issued by the employer under Section 203 of the Income Tax Act, 1961 for the purpose of ascertaining income/salary of the deceased for computing loss of dependency.

I have heard counsel for the parties, perused the paper-book and the records.

No doubt, widow of the deceased brought on record the document Ex.P7 stated to be obtained from website of the company. Sanjay Kumar, Manager (HR) of the company was examined and he brought the complete records since appointment of Neeraj Sharma in the year 2006 till his unfortunate death in November 2008. The witness was cross examined by counsel for the insurance company but there is no challenge to correctness of the documents marked as exhibits in his testimony. In answer to a question by counsel for the insurance company, the witness has deposed that irrespective of deduction of income tax by the employer, it is always duty of the assessee to deposit appropriate amount payable towards income tax as per the norms prescribed for the relevant assessment year. In this view of the matter, I do not find any error much less illegality that the Tribunal relied upon the latest form No.16 Ex.P31 for assessment of income of the deceased as well as computing loss of dependency. As per form No.16 Ex.P31, gross salary of the deceased w.e.f. 01.04.2008 to 31.10.2008 was Rs.1,99,274/- and the salary for the complete year (annual income) comes to Rs.3,62,949/- i.e. Rs.30,246/- per month. After extending benefit of increase in income for future prospects to the extent of 50%, monthly salary is Rs.45,369/- and the annual income Rs.5,44,424/-. As annual income of the deceased was more than Rs.5 lakh, for the assessment year 2009-10, his liability to pay income tax at the rate of 30% on an amount of Rs.44,424/- shall be Rs.68,328/- (Rs.13,328/- + Rs.55,000/-). After deducting income tax, annual income of the deceased comes to Rs.4,76,096/- (monthly income at Rs.39,675/-). On deducting 1/3rd for personal expenses and applying a multiplier of 16, loss of dependency comes to Rs.50,78,357/- [Rs.76,17,536/- (Rs.4,76,096/- x 16) – Rs.25,39,179/- (1/3rd towards personal expenses)].

Under conventional heads, an amount of Rs.1,00,000/- for loss of consortium to the widow; Rs.1,00,000/- to the minor child and Rs.50,000/- to the mother for loss of love and affection and Rs.25,000/- each for expenses on funeral and loss of estate is awarded.

In view of the above, total compensation comes to Rs.53,78,357/-. The compensation awarded by the Tribunal Rs.53,85,744/- is marginally higher than compensation assessed by this

Court. In the circumstances, the award passed by the Tribunal is kept intact.

As an upshot of the aforesaid discussion, appeal filed by the claimants is disposed of in the aforesaid terms whereas the appeal filed by the insurance company fails and is accordingly dismissed.

DECEMBER 12, 2016 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no