IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4543 of 2013 (O&M)
Date of decision: 22.03.2016

ICICI Lombard General Insurance Co. Ltd.

... Appellant

versus

Bimla Devi and others

.... Respondents

2. FAO No. 288 of 2014 (O&M)

Bimla Devi and others

... Appellants

versus

Ram Kishan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajneesh Malhotra, Advocate for the appellant.

Ms. Surekha Rani, Advocate for
Ms. Ekta Thakur, Advocate for respondent Nos. 1 to 6.

<u>K.Kannan, J</u>. (ORAL)

The appeal is for enhancement of claim sought at the instance of the claimants for death of a male aged 48 years. The Insurance Company is in appeal complaining of the compensation assessed as high in FAO No. 4543 of 2014. The deceased was sought to be working as a security guard and in the FIR it was stated that he was working in Sukhna Enclave. At the trial, salary certificate from Shiva Agency was produced purporting to register his income as Rs.15,000/-. The Tribunal was not convinced about the genuineness of the document, particularly in view of the inconsistency between the name of the employer as found in the FIR and the certificate produced at the time of trial and the witness said to be the representative of the employer. The Tribunal, therefore, had directed the witness PW3 to produce the entire register of employees that should have been maintained by the security agency. The Tribunal observed that the direction was not complied with, treated him as an unskilled employee and determined the compensation. I approve of the reasoning of the Tribunal and I find nothing wrong about the average income of deceased at Rs. 5,000/- making a provision of 30% as prospect of future increase for determining the loss of dependency. The Tribunal has provided for 1/5th deduction which is claimed by the insurer as contrary to the principles of assessment laid down in Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77, I apply 1/4th deduction and invoke the multiplier of 13 to assess the loss of dependency at Rs. 7,60,500/-. I will provide for Rs. 1,00,000/- as loss of consortium to the wife and provide Rs. 3,00,000/- for loss of love and affection in the aggregate taking note of the fact that the deceased had a minor son, 2 daughters of whom one of them is minor, a major son and a mother, all of whom were entitled to claim for loss of love and affection. I will tabulate the various heads of compensation as under.

Fatal	Date of accident	11.06.2010	
Age	45 years		
Occupation	Security officer		
Claimants	Wife, mother, son, minor son, two daughters.		
SR. No.	**Heads of claim**	**Tribunal Amount (Rs.)**	**High Court Amount (Rs.)**
1	Income	78,000 Yearly	5,000/-
2.	Add, % of increase, 30%/50%		
3.	Deduction, 1/2, 1/3, 1/4,	62,400/-	1/4

4.	Multiplicand	62,400/-	
5.	Multiplier	13	13
6.	Loss of dependence	8,11,200/-	7,60,500/-
7.	Medical Expenses		
8.	Loss of Consortium	1,00,000/-	1,00,000/-
9.	Loss of love and affection		3,00,000/-
10.	Loss to estate		5,000/-
11.	Funeral Expenses	25,000/-	25,000/-
	Total	9,36,200/-	11, 90,500/-

There shall be an aggregate compensation of Rs. 11,90,500/- and the additional compensation will also attract interest at 9% from the date of the petition till the date of payment.

Considering the fact that the accident had taken place only in the year 2010 and I have provided for a multiplier of 13, I will allow for 60% of the amount as determined to be withdrawn by the wife and the remaining 40% shall be invested for a period of 5 years splitting her share into 5 equal portions, 1st portion for a period of one year, 2nd portion for a period of two years and so on upto 5 years. As regards the share of major daughter, their respective shares will be disbursed in the same manner as referred to above. As regards the share of the mother, her entitlement will be disbursed without any direction for deposit. As regards the share of the minor children, the amount shall be kept in fixed deposit during the entire period of respective minority and 75% of the amount is ordered to be released on attaining majority. The remaining 25% shall be invested for a period of 3 years with the nationalized bank splitting the amount in 3 equal portions, 1st portion for a period of one year, 2nd portion for a period of two years and 3rd portion for a period of 3 years. The respective amounts will be disbursed directly to the claimants on the respective maturity of deposits, and under the advice to the MACT.

The award stands modified and the appeal in FAO No. 288 of 2014 by the appellant is allowed and the appeal filed by the insurer in FAO No. 4543 of 2013 is dismissed.

(K.KANNAN)
JUDGE

22.03.2016
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