

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 2683 of 2015 (O&M)
Date of decision: 29.01.2016

Oriental Insurance Company limited ... Appellant.
 versus
 Usha Devi and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Talwar, Advocate for the appellant.
Mr. R.K. Saini, Advocate for respondent Nos. 1 to 5.
Mr. J.C. Malik, Advocate for
Mr. Ashok Arora, Advocate for respondent No.9.
Mr. R.C. Kapoor, Advocate for respondent No.10.

K.Kannan, J. (ORAL)

CM No. 8122-CII-2015

For the reasons mentioned in the application, duly supported by an affidavit, delay of 42 days in filing the appeal is condoned.

CM is disposed of.

Main case

The compensation assessed as Rs. 93, 08, 910/- is challenged as excessive on a plea that the Tribunal has not taken note of the compassionate assistance provided by the scheme of Oriental Insurance Company limited in allowing for the family of deceased employee to receive the same salary as he was earning at the time of his death upto the certain number of years in the manner provided under the Scheme. There is further contention that the provision for the love and affection to all the children and widow towards the loss of consortium are on the higher side. As far as this Court is concerned both the contentions raised are concluded and there would be no reason for intervention.

The issue of whether there should be any deduction for the compassionate assistance given was squarely brought before the Division Bench of this Court when there was divergence of views in the decision in FAO No. 1322 of 2010, Reliance General Insurance Co. Ltd. Vs. Purnima and others, decided on 21.12.2012 to hold that no deduction would be made on that basis. The plea now made is that in yet another case, Hon'ble Supreme Court has admitted the matter for fresh consideration that involves the similar adjudication. So long as there is no judgment of the Hon'ble Supreme Court taking a view contrary to what has been held in Purnima's case (supra) shall bind this Court as a precedent and it is not necessary to keep the issue open and keeping the case pending in this Court indefinitely. Even as regards the objection to the assessment, the Court has provided for Rs. 1,00,000/- each to the children and as well as for the widow and additional Rs. 1,00,000/- for loss of consortium. This is rather unusual but there is even as regards the amount of compensation for loss of love and affection there is no uniform case law. In some cases Hon'ble Supreme Court itself has awarded Rs. 2,00,000/- for loss of love and affection. If a case would require reappraisal in situation where the award is in the range of Rs. 93,00,000/- I will not subject judgment for reappraisal only for consideration of Rs. 1,00,000/- which could also be supported through some of the decisions of the Hon'ble Supreme Court that have provided for larger compensation than Rs. 1,00,000/-. No pecuniary heads such as loss of love and affection and consortium are subjective and ought to allow for some play in the joints for a Tribunal or any Court to apply at the time of determination of compensation. I will make no intervention only because in the perception of Insurance Company, there is an additional compensation of Rs. 1,00,000/-.

The award is confirmed and the appeal is dismissed.

29.01.2016
kv

(K.KANNAN)
JUDGE