IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2976 of 2009(O&M)
Date of Decision: 16.11.2017

Smt. Pinki Devi & ors. ... Appellants

Versus

Gopi Chand & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.S. Yadav, Advocate, for the appellants.

Mr. Ripu Daman, Asstt. A.G., Haryana.

Ms. Vandana Malhotra, Advocate, for respondent No.3-Insurance Company.

RAJIV NARAIN RAINA, J.(Oral)

1. All the three parties have the complete paper-book in this burnt case in a fire incident and arguments have been heard thereon. Photocopy of the paper book is made part of record of appeal file.

2. The deceased was 21 years old on the date of fatal accident which occurred on 17.7.2008. The deceased left behind his father, mother and widow, who became the claimants in the application under Section 166 of the Motor Vehicles Act, 1988 presented before the Motor Accident Claims Tribunal at Gurgaon. The deceased was employed as a Line Assistant with the Delhi Super Connectivity Limited on the Delhi-Gurgaon Boarder Toll Plaza. The employment status is supported by the affidavits of his widow Pinki Devi PW-4 and his mother PW-5 and their affidavits Ex.PW4/A and Ex.PW5/A respectively.

3. Besides, PW-3 Rahul Yadav, Administrative Executive of the

employer company produced on record the resume of the victim as Ex.P-8, application form Ex.P-9, joining report P-10, appointment letter Ex.P-11 and salary slips Ex.P-12 to P-17 for the months of February to July, 2008. which established that the deceased was paid ₹7,000/- per month as per the salary slips and there was thus no occasion whatsoever for the Tribunal to have disbelieved the testimony of PW-3 Rahul Yadav and reduced the income by assessing it at ₹3,600/- per month without any just cause or legal justification and on mere ipse dixit by ignoring relevant admissible evidence of income. The deceased was an intermediate pass who had joined only 4-5 months prior to the road accident receiving fatal injuries from the offending vehicle which led to his death. The reasons assigned by the Tribunal to reduce the income is found legally unsound reasoning:-

> "Nothing has been brought on record about the income of the deceased prior to joining the present job. If his present income would have been in consonance with his income prior to joining the present service in a very short past, in that event it could have been thought that worth of the deceased as discussed above, who was only an intermediate pass, was around ₹7000/- per month."

4. I am afraid this is not judicial reasoning to adopt for a young man aged 21 years presumably in his first job on completing education. Past service, if any, was irrelevant. The Tribunal again fell in error in assuming that the employment had no job security being in private sector. The job of the deceased, i.e., to control the traffic at the toll plaza cannot be said to be permanent one, was an incorrect premise drawn by the Tribunal to effect future prospects. It may be true since construction of toll plazas are often hand over to a concessionaire by the State on BOT contract, i.e., build,

operate and transfer basis. But the periods for the concessionaire are very long and the toll plaza would have continued but for the intervention of this Court in public interest litigation where the toll plaza contract was abridged to facilitate decongestion and for smooth flow of traffic choking that plaza in Gurgaon for hours impeding movement of vehicle queuing up for payment of toll tax. In any case, the deceased would have gained sufficient experience to quite possibly migrate to similar jobs in other toll plazas and project expansion taking place in the NCR, Delhi. The reasoning that even post-graduates are ready to serve in a meager salary of ₹4,000/- to ₹5,000/- per month is an uncharitable remark which was not necessary for deciding the case and should have been avoided.

5. To use these extraneous inputs to reduce the income is viewing the issue from a wrong and narrow angle and does not qualify as legal reasoning in a case of compensation for death. The assessment of the income of the Tribunal at ₹3,600/- is accordingly held erroneous and deserves to be set aside. It is, accordingly, set aside. The income is maintained at ₹7,000/- per month as I have no reason to disbelieve the testimony of PW-3 Rahul Yadav.

6. In any case, the employment has to be taken as one akin to in connection with the affairs of the State or the Union for controlling traffic on National Highways which is the duty of the authority and the State to make highways and, it is another matter if the Treasury does not support expenditure for construction by State then it has to be by public-private partnership and the ultimate responsibility would be on the shoulders of the State.

7. The Executing Court will work out the dependency and the

income is taken as "established" to work out future prospects i.e. 40% of ₹70,000/- i.e.₹ 7,000+₹28,00=₹9800/-. ₹ 9800/- has to be multiplied by 12x18x2/3(dependency)=₹14,11,200/- In addition, the claimants would be entitled under non-conventional heads to a consolidated sum of ₹70,000/- in view of the law in Special Leave Petition (Civil) No.25590 of 2014, *National Insurance Company Limited v. Pranay Sethi and others,* i.e. ₹15,000/- for funeral expenses, ₹40,000/- for loss of consortium and ₹15000/- for loss of estate increasing the total payable compensation to ₹14,81,200/-. The rate of interest awarded by the Tribunal is maintained as I do not wish to needlessly interfere with discretion exercised by the Tribunal in his award dated 07.02.2009. The entire liability to pay enhanced compensation will be borne by the Insurance company.

8. As a result, the appeal is partially allowed. The impugned award is modified to be read in terms of this order. The compensation awarded at ₹4,70,800/- is enhanced to ₹14,81,200/-. The Executing Court will work out the dependency and the income is taken as "established" to work out future prospects i.e. 40% of ₹70,000/- i.e.₹ 7,000+₹28,00=₹9800/-. ₹ 9800/- has to be multiplied by 12x18x2/3 (dependency)=₹14,11,200/- In addition, the claimants would be entitled under non-conventional heads to a consolidated sum of ₹70,000/- in view of the law in Special Leave Petition (Civil) No.25590 of 2014, *National Insurance Company Limited v. Pranay Sethi and others,* i.e. ₹15,000/- for funeral expenses, ₹40,000/- for loss of consortium and ₹15000/- for loss of estate increasing the total payable compensation to ₹14,81,200/-. The rate of interest awarded by the Tribunal is maintained as I do not wish to interfere with discretion exercised by the Tribunal in his award

dated 07.02.2009. The entire liability to pay enhanced compensation with interest from date of application till payment will be borne by the Insurance company since the vehicle was insured and the driver held a valid driving license.

9. The direction regarding deposit of compensation as apportioned by the Tribunal in the nationalized bank is set aside as money belongs to the claimants. The amount will not be kept in fixed deposit as they have become the rightful dues of the claimants. The compensation will be divided between the widow and the mother, the father being not considered dependent on the deceased son. The widow will be entitled to 2/3rd of the compensation and the mother will be entitled to 1/3rd of the compensation (original and enhanced).

10 The amount of modified compensation be calculated by the respondent insurer and deposited before the Tribunal/Executing Court, within a period of two months from the date of receipt of a certified copy of this order. Thereupon, the learned Tribunal shall proceed to disburse the amount to the claimants as per procedure and without delay.

16.11.2017 **(RAJIV NARAIN RAINA)**
monika **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *No*