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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 12.07.2017

1. **XOBJC-9-CII-2010 IN/AND**
FAO-5821-2009

National Insurance Company Ltd. and Another.

... Appellant(s)

Versus

Lajwanti Devi and others

... Respondent(s)

2. **XOBJC-10-CII-2010 IN/AND**
FAO-5822-2009

National Insurance Company Ltd. and Another.

... Appellant(s)

Versus

Veena and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Neeraj Khanna, Advocate
for the appellant(s)/Insurance Company.

Mr. Ajay Kumar Sharma, Advocate
for the respondent(s) and
for the cross-objectors
in XOBJC Nos.9 & 10-CII of 2010.

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AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of the aforementioned appeals and as well as the Cross-Objections.

Mr. Neeraj Khanna, learned counsel appearing on behalf of the appellant(s)/Insurance Company submits that learned MACT has granted the compensation of ₹ 9,02,796/- in FAO No.5821 of 2009 and ₹ 6,42,264/- in FAO No.5822 of 2009, by taking the income of the deceased as ₹ 8,537/- and ₹ 4,900/-, respectively, has been awarded on account of death of two persons i.e. Ashwani Kumar and Ashok Kumar Wadhwa, who had died in an accident, occurred on 12.07.2006, while they were coming from Ludhiana to Chandigarh in an Indica Car bearing Registration No.CH-03-F-1389 driven by one Ashok Kumar Wadhwa. The aforementioned vehicle met with an accident with Tata Safari bearing No.PB-10BR-0606 driven by Harminder Singh Grewal, the driver. The vehicle is insured with the National Insurance Company Ltd. Since Ashwani Kumar was 46 years' old and Ashok Kumar Wadhwa was 37 years' old, the multiplier 13 and 16 has, respectively, been applied.

He further submits that in the case of Ashwani Kumar, the multiplier 16 has been applied, which is on higher side as multiplier 15 should have been applied instead of 16, thus, urges this Court for setting aside the Award, under challenge.

On the contrary, Mr. Ajay Kumar Sharma, learned counsel appearing on behalf of the claimants/cross-objectors submits that the compensation awarded is liable to be enhanced as neither the future prospects, much less, any compensation on the part of loss of love and affection has been awarded, whereas consortium and funeral expenses are on the meagre side. The multiplier in both the cases is perfectly legal and justified and cannot be tinkered with.

He further submits that in FAO No.5821 of 2009, the deduction has not been correctly determined, whereas it should have been 1/4th instead of 1/3rd, thus, urges this Court for enhancement of the compensation.

In rebuttal, Mr. Neeraj Khanna, learned counsel appearing on behalf of the appellant(s)/Insurance Company, relies upon the order dated 03.03.2017 passed by Hon'ble Supreme Court in ***SLP (Civil) No.1636 of 2016*** titled as ***"Bhogireddi Varalakshmi and others V/s Mani Muthupandi and others"*** to contend that there is no scope of granting of the future prospects as the matter with regard to grant of future prospects has been referred to the Larger Bench.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Neeraj Khanna, representing the Insurance Company, as the deceased Ashwani Kumar was aged 46 years and the multiplier of 13 is perfectly legal and justified. Since on account of his death, he left behind widow, two children and the mother, therefore, the deduction should have been 1/4th instead of 1/3rd. The compensation of ₹ 10,000/- towards consortium is on lesser side, thus, the same is hereby enhanced as ₹ 1,00,000/-, much less, funeral expenses from 5000 to ₹ 25,000/-. I will also provide ₹ 1,50,000/- (Rupees one lac and fifty thousand only) for loss of love & affection to the children and mother.

In the case of Ashok Kumar Wadhwa, the multiplier of 16 has been applied by the Tribunal, whereas it should have been 15. However, there is definite scope of enhancement regarding the heads like loss of consortium, loss of love & affection and funeral expenses.

As regards the increase of future prospect, the Hon'ble Supreme Court in the *ratio decidendi* culled out in the judgment rendered in ***"Chikkamma and another V/s Parvathama and another"*** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self-employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

> *"9. Taking into account the fact that the deceased was a self employed person and also as a question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused."*

In view of the *ratio decidendi* culled out by Hon'ble Supreme Court in ***"Chikkama's case*** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the large Bench of Hon'ble Supreme Court. The compensation assured in both the case is tabulated as under:-

1. ***XOBJC-9-CII-2010***

FATAL ACCIDENT			
Age	46 years		
Occupation	Tailor		
Claimants	Widow, two children, Mother		

	FATAL ACCIDENT		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount(₹)	Amount (₹)
1	Income	8537	8537
2	Add, % of increase 30% / 50%		
3	Less Deduction (1/4)	5691	6403
4	Multiplicand (annualized by multiplying 12)	68,292	76,836
5	Multiplier	13	13
6	Loss of dependence	8,87,796	9,98,868
7	Medical Expenses & Transportation	--	--
8	Loss of Consortium	10,000	1,00,000
9	Loss of love and affection	--	2,00,000
10	Loss to estate	--	5000
11	Funeral expenses	5000	25,000
	Total	**9,02,796**	**13,28,868**

2. ***XOBJC-10-CII-2010***

	FATAL ACCIDENT		
Age	37 years		
Occupation	Supplier with V.K. Construction		
Claimants	Wife, daughter and mother		
	Heads of claim	**Tribunal**	**High Court**
Sr. No.		Amount(₹)	Amount (₹)
1	Income	4900	4900
2	Add, % of increase 30% / 50%		
3	Less Deduction (1/3)	3267	3267
4	Multiplicand (annualized by multiplying 12)	39,228	39,204
5	Multiplier	16	15
6	Loss of dependence	6,27,264	5,88,060
7	Medical Expenses & Transportation	--	--
8	Loss of Consortium	10,000	1,00,000

	FATAL ACCIDENT		
9	Loss of love and affection @ 1,00,000/- to Child & ₹ 50,000 to mother	--	1,50,000
10	Loss to estate	--	5000
11	Funeral expenses		25,000
	Total	**6,42,264**	**8,68,060**

The total compensation payable shall be ₹ 13,28,868/- in XOBJC-9-CII-2010 & ₹ 8,68,060/- in XOBJC-10-CII-2010. The amount in excess over what has already been provided by the Tribunal shall also attract interest @6% from the date of filing of the appeal till the date of realization. The liability shall remain the same as fixed by the Tribunal i.e. amongst the owner, driver and the Insurance Company jointly and severally. The enhanced amount of compensation shall be distributed equally in favour of the claimants.

Resultantly, both the appears bearing FAO Nos.5821 & 5822 of 2009 at the instance of the Insurance Company, are hereby dismissed and the Cross-Objections bearing Nos. XOBJC-9 & 10-CII of 2010 at the instance of the claimants, are allowed to the aforementioned extent.

(AMIT RAWAL)
JUDGE

12.07.2017
Yogesh Sharma

Whether speaking/reasoned **Yes**

Whether Reportable **No**