In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 03.11.2017

FAO No. 2747 of 2012

New India Assurance Company Limited

---Appellant

versus

Harjit Kaur and others

---Respondents

FAO No. 4145 of 2012

Harjit Kaur and others

---Appellants

versus

Surinder Pal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rohit Gowami, Advocate
for Mr. Neeraj Khanna, Advocate
for the appellant in FAO-2747 of 2012
for respondent No. 3 in FAO-4145 of 2012

Mr. B.S.Jaswal, Advocate,
for the appellants in FAO No. 4145 of 2012
for respondent Nos. 1 to 4 in FAO No. 2747 of 2012

Mr. Pardeep Rajput, Advocate
for respondents No. 5 and 6 in FAO-2747 of 2012
for respondent Nos. 1 and 2 in FAO-4145 of 2012

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Rekha Mittal, J.

This order will dispose of FAO Nos. 2747 and 4145 of 2012 as these have emerged out of the same award dated 10.1.2012 passed by the Motor Accidents Claims Tribunal, Amritsar (in short "the Tribunal") whereby compensation has been assessed in regard to death of Harwinder

Singh in a motor vehicular accident that took place on 29.6.2009.

The Tribunal assessed income of the deceased at Rs. 16.793/- per month, added 30% for future prospects, deducted 1/4th for personal expenses and applied multiplier of 15 to compute loss of dependency to the tune of Rs. 29,47,170/-. In addition, an amount of Rs. 5000/- for funeral expenses, Rs. 10,000/- for loss of consortium and another Rs. 5000/- for loss of estate has been awarded making total compensation to Rs. 29,67,170/- payable with interest at the rate of 6% per annum from the date of petition till realization.

FAO No. 2747 of 2012 has been filed by the New India Assurance Company Limited (hereinafter to be referred as "the insurance company") whereas FAO No. 4145 of 2012 by the claimants seeking enhancement of compensation.

FAO No. 2747 of 2012
FAO No. 4145 of 2012

Counsel for the claimants, to substantiate plea for enhancement of compensation, has few submissions to make. It is argued that the tribunal has assessed loss of dependency on the basis of income of the deceased at Rs. 16,793/- per month but the same should be Rs. 20,988/- on the basis of testimony of AW3 Jasbir Singh, Clerk, Block Primary Education Officer, Dhariwal-2 District Gurdaspur and the documents Exs. AW3/B to AW3/D. It is further argued that in the document Ex. AW3/B, salary of deceased Harwinder Singh in column No. 10 is Rs. 16,793/- and salary of Savita Khokhar at Sr. No. 32 of the same document is Rs. 16,793/-. In document AW3/C, salary of Savita Khokhar in the month of August 2009 is shown as Rs. 20,988/-. It is argued that in the certificate Ex. AW3/D, it has been mentioned that as per the revised scale with effect from 1.1.2006, basic salary of the deceased was Rs. 14,760/-as on 1.12.2008 and the deceased was entitled to annual increment in the month of December. The salary of the deceased on the basis of basic pay of Rs. 14,760/- would have been Rs. 20,988/- as on 1.8.2009.

Another submission made by counsel is that the deceased was less than 40 years of age, therefore, admissible addition for future prospects in the light of latest enunciation laid down by Hon'ble the Apex Court in **Special Leave Petition (Civil) No. 25590 of 2014 (National Insurance Company Limited vs. Pranay Sethi and others** decided on 31.10.2017 should be 50%. The Tribunal has not allowed adequate compensation under conventional heads.

Counsel representing the insurance company, on the contrary, would urge that the claimants cannot press for benefit of salary which could have been fixed after death of Harwinder Singh as well as benefit of future prospects as grant of both the benefits would amount to extending double benefit to the claimants.

Another submission made by counsel is that driver of offending vehicle was not possessing a valid driving licence, therefore, the insurance company is entitled to be exonerated of its liability to pay compensation or in the alternative right of recovery against the insured after payment to the claimants. According to counsel, evidence of the insurance company was closed by order of the Court and later an application for additional evidence filed by the insurance company was dismissed thereby depriving the insurance company of its right to adduce evidence to establish its plea that driver was not possessing a valid driving licence. Further argued that the insurance company may be allowed one opportunity to adduce the evidence for discharging onus of issue No. 3 and the matter may be remitted to the Tribunal with a direction to record additional evidence and thereafter to decide issue No. 3 afresh.

Counsel representing the insured has refuted contention of counsel for the insurance company with the submission that as the insurance company failed to adduce any evidence to establish its plea in respect of the driving licence despite number of opportunities granted for the purpose, the learned Tribunal rightly rejected their plea for adducing additional evidence which was required to be adduced by the insurer at appropriate stage of the proceedings. In addition, it is argued that in another accident involving the same vehicle and driver as is apparent from copy of the first information report (Annexure A-1), the insurance settle the claim and paid an amount of Rs. 3,25,000/- to Mr. Subhash Chander as per Annexure A-2.

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

The claimants examined Jasbir Singh AW3 to prove salary of deceased Harwinder Singh who was working as Elementary Trained Teacher. The witness produced on record documents Ex. AW3/A to AW3/D. Perusal of statement of Jasbir Singh when appreciated in the light of documents brought on record there remains no dispute that salary of the deceased at the time of death was Rs. 16,793/- per month. Document Ex. AW3/D clearly makes reference to basic salary at Rs. 14,760/- per month and salary of the deceased would have been Rs.

20,988/- as on 1.8.2009. Indisputably, Harwinder Singh passed away on 30.6.2009. It is difficult to hold in the light of statement of Jasbir Singh and so also the documents brought on record that the deceased was entitled to salary more than Rs. 16,793/- on the date of death. In the circumstances, the Tribunal has rightly taken into consideration income of the deceased at Rs. 16,793/- per month for computing loss of dependency.

As per document AW3/D, the deceased was born on 11.12.1973 and he was less than 36 years on the date of accident. In view of the latest enunciation laid down by Hon'ble the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others' case (supra)** claimants shall be entitled to increase in income for future prospects to the extent of 50%. Annual income of the deceased comes to Rs. 16,793 x12 =Rs. 2,01,516/-. Tax liability would be Rs. 4152/-. After deducting tax, annual incomes comes to Rs. 1,97,364/-.The multiplier adopted and deduction allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.1,97,364 x 15 =29,60,460 + 1480230 (50%F.P.) =44,40,690 – 11,10,173($1/4^{th}$)=**Rs.33,30,517/-.**

The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to Rs.34,00,517 and the additional amount is Rs.4,33,347/-. The additional amount shall carry interest at the of 7.5% per annum from the date of petition till realization payable to the widow and children of the deceased in equal proportion. The amount falling to the share of the children shall be deposited in fixed deposit receipts till they attain the age of majority or for a period of three years, whichever is later.

So far as the plea of the insurance company that the driver was not possessing a valid driving licence, indisputably, the insurance company did not examine a witness from the concerned licencing authority to establish its plea in this regard. Perusal of the records of the Tribunal would reveal that the claimants concluded their evidence on 21.4.2011 and thereafter, case remained pending for evidence of respondent Nos. 2 and 3 including the insurance company till 3.9.2011. During the interregnum, the Tribunal adjourned the case on 5-6 occasions but the insurance company failed to adduce any evidence. Evidence of the insurance company was closed by order on 3.9.2011. Even on 3.9.2011, right of the insurance company to adduce evidence was reserved for the next date fixed i.e. 19.9.2011. On 19.9.2011, again an opportunity was provided to the insurance company to adduce evidence on the date fixed i.e. 7.10.2011. As the insurance company failed to examine the concerned official from the office of District Transport Office, Amritsar despite number of opportunities granted for the purpose, I find it difficult to accept contention of the insurance company that adjudication qua issue No. 3 needs to be re-opened by permitting the insurance company to adduce additional evidence and thereafter to decide the said issue afresh. In this view of the matter, findings recorded by the Tribunal on Issue No. 3 are liable to be affirmed and ordered accordingly.

No other point has been raised.

For the foregoing reasons, appeal filed by the claimants is partly allowed in the aforesaid terms. Resultantly, the appeal preferred by the insurance company is disposed of.

(Rekha Mittal)
Judge

03.11.2017
PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No