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

**FAO No. 3776 of 2012 (O&M)**
**Date of Decision : 15.11.2017**

**NATIONAL INSURANCE COMPANY LIMITED**

.... Appellant

Versus

**RAJBIR AND OTHERS**

.... Respondents

**FAO No. 3395 of 2012 (O&M)**

**KALLU AND OTHERS**

.... Appellants

Versus

**DHARMENDER SINGH AND OTHERS**

.... Respondents

**CORAM : HON'BLE MR. JUSTICE B.S.WALIA**

Present: Mr. Ashwani Talwar, Advocate
for the appellant-Insurance Company.

Ms. Ekta Thakur, Advocate,
for the appellants in FAO No. 3395 of 2012

Mr. Kunal Mulwani, Advocate as
Amicus Curiae.

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**B.S.WALIA, JUDGE (ORAL)**

1. This order will dispose of FAO No. 3776 of 2012 filed by the Insurance Company challenging the award passed in favour of claimants/respondents of deceased Chanderwati as well as FAO No. 3395 of 2012 filed by the appellant/claimants seeking enhancement of the compensation awarded on account of deceased Rajwati.

2. A sum of ₹4,15,000/- was awarded by the Motor Accident Claims Tribunal to the claimants of the deceased Chanderwati by taking into account income of ₹3000/- per month, dependency @ 3/4th by applying multiplier of 15, besides awarding a sum of ₹10,000/- under conventional heads.

3. The Insurance Company has challenged the compensation awarded on two grounds only. Firstly, that instead of deducting 1/3rd towards personal expenses of the deceased in terms of Note to the Second Schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') the learned Tribunal has made deduction @ 1/4. Secondly, instead of award of ₹10,000/- on account of conventional heads, ₹9500/- is to be awarded in terms of Note 3 to the Second Schedule to the Act.

4. Learned counsel for the respondents/claimants while not disputing the aforementioned two fold submission of the learned counsel for the appellant/Insurance Company contended that income had been wrongly assessed at ₹ 3000/- per month whereas as per minimum wages applicable in the Union Territory, Chandigarh during the year 2009, a sum of ₹3914/- per month was payable as minimum wages to a labourer. In the light of the aforementioned submission, learned counsel for the respondent/claimants contended that assuming that deceased did not have work for the entire month, still earning of ₹3300/- per month was a reasonable figure by excluding few days in a month during which the deceased could be said to have not got work.

5. Minimum wages of ₹3914/- per month payable to a labourer in the Union Territory, Chandigarh during the year 2009 is not disputed by the learned counsel for the appellant-Insurance Company.

6. Learned counsel for the respondent/claimants further contended that in view of the decision of the Hon'ble Supreme Court in **Ranjana Prakash & others versus Divisional Manager and another 2011 (14) SCC 639**, this Court while considering the appeal of the Insurance Company could in view of Order 41 Rule 33 of the CPC, pass appropriate orders with regard to just compensation to be awarded to the respondent/claimants.

7. Accordingly, taking into account that the minimum wages payable to a labourer in the Union Territory, Chandigarh during the year 2009 was ₹3914/- per month, it would be appropriate to enhance the income assessed from ₹3000/- to ₹3300/- per month by taking into account that for some days in a month the deceased could reasonably expected to be not having any work. Accordingly, the income assessed is enhanced from ₹3000/- to ₹3300/- per month.

8. Learned counsel for the respondent/claimants further contended that multiplier of 15 had wrongly been applied whereas as per the Second Schedule to the Motor Vehicles Act, in case age of deceased was between 30-35 years, multiplier of 17 was to be applicable. Since the deceased was admittedly 35 years of age, therefore, multiplier of 17 was to be applied.

9. Aforementioned submissions of learned counsel for the claimants/respondents merits acceptance in view of multiplier specified in the Second Schedule to the Act in respect of deceased being 35 years of age. Accordingly, multiplier of 15 applied by the learned Tribunal is modified, instead multiplier of 17 is held applicable.

10. Next coming to the award of ₹10,000/- towards conventional heads, submission of learned counsel for the Insurance Company merits acceptance for reducing the same to ₹9500/- in the context of Note 3 to the Second

Schedule to the Act. Accordingly, compensation awarded @ ₹10,000/- under conventional heads is reduced to ₹9500/- in accordance with Note 3 to the Second Schedule to the Act.

11. Accordingly, as against the compensation of ₹4,15,000/- awarded earlier by the Tribunal, the compensation now payable would be ₹3300 x12x17x 2/3rd = ₹4,48,800 + ₹9500/- (conventional heads) Total ₹4,58,300/- along with interest @ 6% per annum with effect from the date of filing of the claim petition till the date of payment.

12. Needless to mention that after making payment of the awarded compensation to the appellant-claimants, the Insurance Company would be at liberty to recover the same from the registered owner of the offending vehicle.

**FAO No. 3395 of 2012**

13. Compensation of ₹3,70,000/- was awarded by the Motor Accident Claims Tribunal (for short 'the Tribunal') to the claimants of the deceased Rajwati by taking into account income of ₹3000/- per month, and by imposing cut of 1/3rd on account of personal expenses, annual dependency at ₹24,000/- and after applying multiplier of 15 by taking into account the age of deceased as 35 years, including ₹3000/-towards funeral expenses and ₹7000/- towards loss of love and affection as well as loss of estate. Accordingly, total compensation of ₹3,70,000/- was awarded.

14. Appellant-claimants have sought enhancement of compensation on two grounds, viz, minimum wages payable in the Union Territory, Chandigarh in the year 2009 were ₹3914 per month, accordingly minimum of ₹3300/- per month ought to be treated as income of the deceased presuming that for some days in a month he may not have got work.

15. Secondly that as per the Second Schedule to the Motor Vehicles Act, 1988 (hereinafter referred to as the ' Act') where the deceased was between the age group of 30-36 it was multiplier of "17" which was applicable and not "15".

16. Learned counsel for the respondent- Insurance Company while not disputing the rate of minimum wages payable to a labourer in the Union Territory, Chandigarh during the year 2009 at ₹3914/- per month as also the claim of the appellant for enhancement of the income assessed to ₹3300/- per month, contended that the amount of ₹ 10,000/- awarded on account of conventional heads was required to be reduced to ₹9500/- in accordance with Note 3 to the Second Schedule to the Act.

17. Submissions of learned counsel for the parties have been considered.

18. Prayer of the appellants for enhancement of the income assessed from ₹3000/- per month to ₹3300/- per month merits acceptance in view of minimum wages of ₹3914 per month payable to a labourer in the Union Territory, Chandigarh during the year 2009. In the circumstances, it would be just and proper to take a sum of ₹3300/- per month as income of the deceased by taking into account that for few days he may not have work during the month. Likewise in view of deceased admittedly being 35 years of age, multiplier of 17 held to be applicable in terms of the Second Schedule to the Act.

19. Submission of learned counsel for the Insurance Company for reduction of ₹10,000/- awarded under conventional heads to ₹9500/- also merits acceptance in view of Note 3 to the Second Schedule to the Act.

20. Accordingly, as against the compensation of ₹3,70,000/- awarded earlier by the Tribunal, compensation now payable would be as under :

₹3300x12x17x2/3rd = ₹4,48,800 + ₹9500/- (conventional heads) = ₹4,58,300/- along with interest @ 6% per annum.

21. Accordingly, the award of the learned Tribunal is modified to the extent as noted above. As against the sum of ₹3,70,000/- along with interest @ 6% awarded earlier, the compensation now payable would be ₹4,58,300/- along with interest @ 6% per annum with effect from the date of filing of the claim petition till the date of payment, less amount, if any, already paid.

22. Needless to mention that after making payment of the awarded compensation to the claimants, the Insurance Company would be at liberty to recover the same from the registered owner of the offending vehicle.

23. Both the appeals are disposed of in the above terms.

**( B.S.WALIA )**
**JUDGE**

**November 15, 2017**
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1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No