IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2171 of 2013 (O&M)
Date of Decision: 15.12.2017

New India Assurance Company Ltd.

...Appellant(s)

Versus

Nirmala Devi and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vinod Sharma, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant(s).

Mr. Shoaib Khan, Advocate
for respondents No.1 to 4.

Mr. Upender Prashar, Advocate
for respondent No.5.

Mr. D.D. Sharma, Advocate
for respondent No.6.

Mr. Pardeep Goyal, Advocate
for respondent No.8 (NIC)

ANITA CHAUDHRY, J.

This appeal had been filed by the Insurance Company.

The only submission at the time of notice of motion was that the trial Court had taken the income at Rs.42,921/- but income tax was not deducted. The Coordinate Bench had stayed the recovery beyond 80%.

The short submission on behalf of the appellant is that the salary certificate shows that income tax was being deducted and the income should have been considered taking the total salary without deducting income tax and the calculation should have been made after deduction of income tax.

The submission on behalf of the claimants is that the Apex Court in the latest judgment in '***National Insurance Company Ltd. Vs. Pranay Sethi and others (SLP (Civil) No.25590 of 2014)'*** has allowed addition towards future prospects and order 41 Rule 33 CPC entitles the Court to award higher compensation than what is claimed. Reliance was also placed upon ***'Surti Gupta Vs. United India Insurance Co. and others, 2015(2) R.C.R. (Civil) 595', 'Jitendra Khimshankar Trivedi and others Vs. Kasam Daud Kumbhar and others, 2015(1) Law Herald (SC) 657', 'The APSRTC, rep. by its General Manager and another Vs. M. Ramadevi and others, 2008(1) R.C.R. (Civil) 885' and ' Nagappa Vs. Gurudayal Singh and others, 2003(1) R.C.R. (Civil) 258'.***

Counsel urges that though there have not filed any appeal or cross-objections, the increase be given.

The submission on behalf of the appellant is that limited notice was given only on the point of income tax and no appeal or cross-objections were filed and a party cannot seek enhancement when they did not file appeal or the cross-objections.

I have gone through the authorities referred to by the respondents. In those cases, the finding is that the Court can allow higher compensation than what has been claimed in the claim petition. These findings were given in the appeal filed by the claimants. None of the judgments refer to the issue that enhancement can be granted without filing appeal or cross-objections. Therefore, the arguments sought to made on behalf of the claimants is rejected.

It is ordered that the amount assessed by the Tribunal would be paid by the Insurance Company after deducting income tax. The appeal is disposed of and the award is modified.

(ANITA CHAUDHRY)
JUDGE

December 15, 2017
ps-I

Whether Reasoned/Speaking **Yes/No**
Whether Reportable **Yes/No**