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

**F.A.O No. 1524 of 2014 (O&M)
Decided on: 06.12.2017**

Smt. Neetu Devi and another

.....Appellants

versus

Anil Singh and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Bhavna Grewal, Advocate
for Mr. S.K.Yadav, Advocate
for the appellants.

Mr. M.B.Jain, Advocate
for the respondent-Insurance Company.

Rajbir Sehrawat, J.(Oral)

1. The present appeal has been filed by the claimants; challenging the award passed by the Motor Accident Claims Tribunal, Narnaul, on account of insufficiency of the compensation awarded on account of death of Manoj Kumar in an accident.
2. The brief facts of this case are that the claimants filed a claim petition under Section 163-A of the Motor Vehicles Act, 1988; claiming that on 10.06.2011, Manoj Kumar was going to Najafgarh (Delhi) from Village Mandhan; on left kacha side of the Behror to Narnaul road. At about 3.30 - 4.00 AM, he reached near Airtel Tower. In the meantime, a Truck bearing registration No. HR-55-6875, being driven by respondent No. 1, in a rash and negligent manner came and hit Manoj Kumar. Manoj Kumar received multiple injuries and succumbed to these injuries on the spot. It was claimed that the accident in question was witnessed by the father of the

deceased. In the claim petition, it was claimed that the deceased was 25 years of age and was earning Rs. 3300/- per month; being a bangle seller. Accordingly, the compensation was claimed.

3. On notice, respondent No. 1 filed written statement denying the averments of the claim petition. However, it was claimed that the truck was duly insured with the Insurance Company i.e. Respondent No. 3 in the claim petition. It was further pleaded that there was no violation of the terms and conditions of the insurance policy. Therefore, it was prayed that if there is any liability for payment of compensation then the same has to be discharged by the respondent No. 3-the Insurance Company. Respondent No. 2 was proceeded ex-parte.
4. Respondent No. 3 filed separate written statement and besides taking routine preliminary objections; denied the contents of the claim petition. It was further pleaded that no such accident had taken place, as alleged by the claimants. It was further pleaded that it was a false case and the same has been filed in collusion with the respondents No. 1 and 2. Still further, it was claimed that respondent No. 1 was not holding a valid and effective driving license at the time of accident. Beside this, the violation of terms and conditions of the policy was also claimed by the Insurance Company.
5. Parties led their respective evidence.
6. After hearing the counsel for the parties and perusing the record, the Tribunal held that the claimants have not led any evidence to prove the negligence of the respondent No. 1, the driver of the alleged offending vehicle. However, the claimants have proved that the accident happened out of the use of the offending truck. Therefore, the respondents were held liable to pay the compensation.

7. While assessing the compensation, the Tribunal held that although no

evidence has been led to prove the income, however, taking into consideration the facts and the circumstances, as proved on record, the income of the deceased cannot be assessed less than Rs. 3300/- per month. The Tribunal further held that in view of the judgment of the Hon'ble Supreme Court rendered in the case of *New India Insurance Company Ltd. Versus Gopali and others, 2012 (3) RCR(Civil) 818 SC*; since the accident involved a death of the poor person having income below Rs. 5,000/- per month; the rule of 1/3rd deduction on account of personal expenses; cannot be applied and only a deduction of 1/10th can be made. Accordingly, the deduction of 1/10th of the income was applied by the Tribunal. Thus, the monthly income comes to Rs. 2970/- ($3300 - 3300 \times 1/10^{\text{th}}$). The Tribunal assessed the age of the deceased to be 35 years, as per the postmortem report. Accordingly, the annual loss of dependency was assessed by the Tribunal to be Rs. 35,640/- (2970×12). However, although the Tribunal assessed the age of the deceased to be 35 years; still multiplier of 13 was applied by the Tribunal. Accordingly, the total loss of dependency to the dependent was assessed to be Rs.4,63,320/- (35640×13). Beside this, Rs. 10,000/- was awarded on account of transportation and last rites. Still further, the claimants were held entitled to compensation on account of loss of consortium at Rs. 10,000/-. Accordingly, a total compensation of Rs. 4,83,320/- was awarded by the Tribunal.

8. Arguing the case, learned counsel for the appellant submitted that since the deceased has been of the age of 35 years, even, as per the Second Schedule, the multiplier of 17 is applicable in the present case. Still further it is submitted that funeral expenses, loss of consortium and the compensation on account of loss of estate are grossly inadequate and the same deserve to

be enhanced.

9. On the other hand, learned counsel for the respondent-Insurance Company has submitted that since the claim petition is only under Section 163-A of the Act, therefore, as per the Second Schedule, the deduction of 1/3rd is to be applied on account of personal expenses of the deceased. Therefore, his submission is that the award be modified, accordingly. To buttress his argument, learned counsel for the respondent-Insurance Company relied upon the judgment of the Hon'ble Supreme Court rendered in **2011 ACJ 2418 titled as *Ranjana Parkash Versus Divisional Manager, New India Insurance Company and another***; to contend that even if the appeal is not filed by; a party to the appeal by the other side; still an argument can be raised to defend the appeal; even on a finding which had gone against the respondent.

10. After hearing learned counsel for the parties, this Court is of the considered opinion that both the counsel have raised valid point. The assessment of the income by the Tribunal cannot be found fault with; for the simple reason that the claim petition was moved under Section 163-A of the Act and the income claimed by the claimants was only Rs. 3300/- per month. Accordingly, the income of the deceased has rightly been assessed by the Tribunal to be Rs. 3300/- per month. However, learned counsel for the appellant is right in submitting that as per the age of the deceased, multiplier of 17 is required to be applied in this case. Accordingly, in the present case, the multiplier of 17 is held to be applicable.

11. So far as the deduction on account of personal expenses is concerned, this Court is in agreement with the argument of learned counsel for the respondent-Insurance Company. Since claim petition was under Section 163-A only and even as per the evidence produced on record in this case,

the negligence of the offending vehicle has not been held to be proved,

therefore, only standardised deduction, as provided under Second Schedule of the Act, has to be applied. Accordingly, deduction of $1/3^{\text{rd}}$ is held applicable in this case. Learned counsel is right in relying on the judgment cited by him and the provisions in Code of Civil Procedure, as contained in Order 41 Rule 33, which enables the Appellate Court to pass an order which ought to have been passed by the trial Court and to make such order even in favour of the respondents, who have not filed an appeal or cross objection; to question a particular finding recorded against him by the Courts below. However, the judgment relied by the respondent also shows that the plea of application of Order 41 Rule 33 of Code of Civil Procedure can be raised by the respondent; only limited to the extent of defending the compensation awarded at the level which was awarded by the Tribunal and for preventing the enhancement of compensation from as was awarded by the Tribunal.

12. Accordingly, the monthly loss of dependency in this case would be Rs.2200/- ($3300 - 3300 \times 1/3^{\text{rd}}$). The annual loss of dependency, therefore, would be an amount of Rs. 26,400/- (2200×12). Applying the multiplier of 17 the amount of loss of dependency to the claimants comes to Rs. 26,400 $\times 17 = 4,48,800/-$

13. Besides this, learned counsel for respondents submits that on account of conventional head only Rs. 9,500/- can be granted under Second Schedule of the Act. Accordingly, the total amount to which the claimants are held entitled comes to Rs. 4,58,300/-

14. However, the above made calculations show that the amount of Rs. 4,58,300/- becomes less than the amount of Rs. 4,83,320/-, which was awarded by the Tribunal. However, since the Insurance Company has not

filed any appeal in this case and the judgment relied upon by the learned

counsel for the respondent-Insurance Company permits the usage of provision of Order 41 Rule 33 of Code of Civil Procedure only for defending the appeal up to the amount awarded by the Tribunal and not for the reduction of same, therefore, this Court considered it appropriate to retain the amount at Rs. 4,83,320/-, as was awarded by the Tribunal.

15. In view of the above, while modifying the findings as mentioned above, the final amount of the award is retained at the same level; as was awarded by the Tribunal. The interest on this amount is also retained at the same rate; as was awarded by the Tribunal.

16. No other argument was raised.

17. In view of the above, the present appeal is disposed of in above said terms.

6th December, 2017

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**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes