IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3324 of 2013 (O&M)
Date of Decision: December 18, 2017

Smt. Tanu and others

..Appellant(s)

Versus

Shanwaz and others

..Respondent(s)

with

FAO No. 5537 of 2013 (O&M)

Shri Ram General Insurance Company

..Appellant(s)

Versus

Smt. Tanu and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashwani Arora, Advocate
for the appellants in FAO-3324-2013 and
for respondents no.1 to 3 in FAO-5537-2013.

Mr. Krishan Kant, Advocate for
Mr. Tejender K. Joshi, Advocate
for the appellant in FAO-5537-2013 and
for respondent no.3 in FAO-3324-2013.

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ANITA CHAUDHRY, J.

CM-23370-CII-2013 in
FAO-5537-2013

For the reasons set out in the application, same is allowed as prayed for and delay of 178 days in filing the appeal is condoned.

MAIN CASES

These are two appeals, one filed by the claimants for enhancement and other filed by the insurance company against the quantum allowed to the claimants by the Motor Accident Claims Tribunal, Tribunal (here-in-after referred to as the Tribunal).

Ram Dass was 42 years old. He was stated to be managing a Chat counter in a sweet shop in Mohali. He met with an accident on 21.08.2010 and succumbed to the injuries. It was claimed that he was getting salary of Rs.8,000/- per month.

The claimants summoned the proprietor of M/s. Katani Sweets who failed to produce any record but procured a certificate to show that he was paying Rs.280/- per day. In the cross-examination, he stated that though he was a income tax payee and had been maintaining records they were not showing the amount paid to Ram Dass. The Tribunal rejected the statements and took the minimum wages paid to a skilled worker, which were Rs.4,200/- per month and calculated the compensation by deducting $1/3^{rd}$ and applying the multiplier of 14.

The submission on behalf of the claimants is that when the employer has stepped into the witness box, the Tribunal ought not to have rejected his statement and it was worthy of acceptance and a higher income should be taken and upon that the addition of future prospects should be given. Counsel also submits that the amount allowed for the miscellaneous heads is also on the lower side. Reliance was placed upon three judgments of this Court ***Mosmi and others Vs.***

Shamsher Singh and others, FAO-4378-2001, D.O.D. 23.09.2015, FAO-7149-2016, D.O.D. 02.12.2016 and ***FAO-1697-1996, D.O.D. 14.12.2010***.

The submission on behalf of the insurance company is that the income was rightly taken and there is no evidence with respect to the salary the deceased was getting and that record had been kept away and therefore, it was rightly rejected. The counsel submits that the addition towards future prospects as per latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in SLP (Civil) No.25590 of 2014 would be 25% whereas the Tribunal has given an increase of 30%.

I would not make any change so far as the income of the deceased is concerned. The Tribunal had taken the income which a skilled worker would get. The Tribunal had rightly rejected the statement of the witness as he had failed to get any record nor he could show that he was its proprietor. Only a certificate on a letter-head was produced despite the fact that income tax returns were being filed. The witness had admitted that they were not showing the amount being paid to Ram Dass in their returns.

Taking the income at Rs.4,200/- per month and giving an increase of 25%, the addition would be Rs.1,050/-, raising the total to Rs.5,250/-. Making a deduction of $1/3^{rd}$ i.e. Rs.1,750/-, the remaining amount would be Rs.3,500/- and the compensation would be Rs.3,500 x 12 x 14 = Rs.5,88,000/-. A sum of Rs.70,000/- should be added

(Rs.15,000/- for loss of estate, Rs.15,000/- for funeral and Rs.40,000/- for loss of consortium), which raises the total to Rs.6,58,000/-. The Tribunal had allowed Rs. 6,31,520/-, which would be deducted and the remaining amount would be payable with interest @ 6% from the date of filing of appeal by the claimants till realization.

Both the appeals are disposed of on above terms.

(ANITA CHAUDHRY)
JUDGE

December 18, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No