IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 16.11.2017

FAO No. 2235 of 2014 (O&M)

Shri Ram General Insurance Co Limited .... *Appellant*

Versus

Parmod Sharma and others ....*Respondents*

FAO No. 2609 of 2013

Parmod Sharma and others ....*Appellants*

Versus

Dharmender and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Rajat Garg, Advocate
for the insurance company

Mr. J P Sharma, Advocate
for the owner of the offending vehicle

Ms Bhavna Grewal, Advocate
for the claimants

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Rekha Mittal, J. (Oral)

CM 8062-CII of 2014 in FAO No. 2235 of 2014

Prayer in this application is for condonation of delay of 107 days in filing the appeal.

In view of averments made in the application supported by an affidavit of the applicant and arguments advanced, application is allowed and delay of 107 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 15.02.2013 passed by the Motor Accidents Claims Tribunal, Narnaul (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded in regard to death of Rajender Parshad in a motor vehicular accident that took place on 02.06.2011.

The Tribunal has assessed income of the deceased at Rs.5,000.00 per month, deducted 1/3rd for personal expenses and applied multiplier of 11 to compute loss of dependency at Rs.4,39,956.00. An amount of Rs.4,20,286.00 has been awarded qua medical expenses incurred on treatment of deceased qua injuries sustained in the occurrence. In addition, Rs.10,000.00 on account of loss of consortium to widow and love and affection, another sum of Rs.10,000.00 on account of expenses of funeral and last rites has been awarded making total compensation to Rs.8,80,242.00 payable to widow with interest at the rate of 7.5% per annum from the date of petition till realization.

FAO 2609 of 2013 has been filed by the claimants seeking enhancement of compensation whereas **FAO 2235 of 201**4 has been filed by the insurance company to assail the award.

Counsel for the claimants would urge that though the Tribunal has held that the deceased was a shop keeper but his income has been wrongly assessed at Rs.5,000 per month, liable to be enhanced by taking into consideration large number of documents marked P73 to P82 and P124 to P127. It is further argued that deceased was 53 years old at the time of occurrence and claimants are entitled to increase in income for future prospects in the light of latest judgment of Hon'ble the Supreme Court of India ***National Insurance Company Limited v. Pranay Sethi and others*** (SLP (Civil) 25590 of 2014, decided on 31.10.2017). Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that with regard to occurrence dated 02.06.2011, the first information report was lodged vide FIR No. 80 dated 20.06.2011 for offence punishable under Sections 279 and 304-A of Indian Penal Code, Police Station Ateli after a delay of 18 days. In the FIR, there is no reference to particulars of the alleged offending vehicle, sufficient to establish that the vehicle has been planted later to claim compensation. Another submission made by counsel is that as sons of the deceased were not dependent upon his earning and only widow can be held entitled to get compensation, admissible deduction for personal expenses should be 50% in place of 1/3rd.

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

Before adverting to submissions of the parties qua quantum of compensation assessed by the Tribunal, I would like to deal with plea of the claimants with regard to involvement of Truck (Dumper) bearing No. HR-66-6875 in the accident stated to be driven by Dharmender-respondent No. 1. There cannot be any dispute about the settled position in law that lodging of FIR is not a *sine qua non* for maintaining an application for compensation. To establish their plea that Rajender Parshad sustained injuries in the motor vehicular accident due to rash and negligent driving of the aforesaid Truck, Jagbir (PW5), an eye witness to the occurrence was examined. He tendered into evidence his duly sworn affidavit Ex PW5/A and reiterated version set up in the claim application that accident was caused due to rash and negligent driving of Truck bearing No. HR-66-6875. Counsel for the insurance company has failed to point out any material elicited in cross examination of Jagbir to say that his testimony is not trust-worthy or he has been introduced to support cause of the claimants. He has also failed to point out any material to show that there was collusion between the claimants and owner of the offending vehicle and as a result thereof, owner of the vehicle agreed to lend his vehicle to be involved in the occurrence. In this view of the matter, the insurance company cannot derive any advantage to its contention from failure of lodging of FIR till 20.06.2011 or FIR not containing particulars of the offending vehicle. There is no rebuttal to testimony of Jagbir to disprove the accident. In this view of the matter, findings recorded by the Tribunal on issue No. 1 do not suffer from any illegality warranting intervention. As a consequence, findings recorded by the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

This brings the Court to plea of the parties with regard to quantum of compensation assessed by the Tribunal. The claimants marked certain documents on record to prove avocation and income of the deceased. Perusal of the receipts with regard to payment made to Municipality would reveal that certain payments were made to Municipality qua licence fee for doing business on Rehri/on platform sufficient to establish that deceased was not doing business in a shop but was selling certain articles on a Rehri. Indisputably, the deceased did not file any income tax return. It is not clear if deceased had any PAN number much less an income tax assessee. That being so, the Tribunal has rightly assessed income of the deceased at Rs.5,000.00. However, the claimants shal1 be entitled to increase in income to the extent of 10% as the deceased was more than 50 years but less than 60 years of age.

The Tribunal has rightly applied multiplier of 11 in the light of enunciation laid down by Hon'ble the Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77.*** The Tribunal has allowed deduction to the extent of 1/3rd for personal expenses of the deceased. The application for compensation has been filed by the widow, two sons and children of two sons of the deceased. Assuming that widow was the only dependent upon earning of the deceased, deduction allowed by the Tribunal for personal expenses to the extent of 1/3rd is liable to be affirmed. In this context, reference can be made to Division Bench judgment of the Madhya Pradesh High Court ***Anurag Jain and others vs. Ramveer Singh and others, 2007 (4) TAC 279*** and judgment of the Karnataka High Court ***Ningappa Ramanna Kori and another vs. Tamil Nadu State Transport (Madurai) Ltd., 2016 AAC 1629***. Reference is also made to judgment of this Court ***Pawan Kumar and others vs. Ramesh Kumar and others, 2016(1) Law Herald 758***. This apart, even if sons of the deceased were not dependent upon his earning, they were entitled to loss of estate, being Class-I heirs. As such, deduction for personal expenses allowed by the Tribunal cannot be faulted with. In this view of the matter, loss of dependency comes to **Rs.4,84,000.00** *i.e.* Rs.6,60,000.00 (Rs.5,000.00 x 12 x 11) + Rs.66,000.00 (10% future prospects) – Rs.2,42,000.00 (1/3rd deduction).

Compensation awarded by the Tribunal qua medical expenses to the tune of Rs.4,20,286.00 is affirmed.

Under conventional heads, claimants shall be entitled to following compensation:-

Loss of consortium to widow	Rs.40,000.00
Funeral expenses	Rs.15,000.00
Loss of estate	Rs.15,000.00
Total	Rs.70,000.00

Total compensation comes to **Rs.9,74,286.00** (Rs.4,.84,000.00 +Rs.70,000.00+Rs.4,20,286.00) and additional amount is **Rs.94,044.00** (Rs.9,74,286.00 - Rs.8,80,242.00) which shall carry interest at the rate of 7.5% per annum from the date of petition till realization payable to widow of the deceased.

The appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

16.11.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No