IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 1729 of 2016 (O&M)
Date of decision: 05.09.2017

Oriental Insurance Company Limited .... *Appellant*

Versus

Smt. Pooja Rani and others ....*Respondents*

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

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Present: Mr. Harsh Aggarwal, Advocate
for the appellant

Mr. Ashish Gupta, Advocate
for respondent No. 2 (guardian ad litem)

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Rekha Mittal, J. (Oral)

CM-6493-CII-2016

Prayer in this application is for condonation of delay of 35 days in filing the appeal.

In view of averments made in the application supported by an affidavit of an official of the insurance company and arguments advanced by counsel for the parties, the application is allowed and delay of 35 days in filing the appeal stands condoned.

Main Case

The present appeal directs challenge against award dated 03.11.2015 passed by the Motor Accidents Claims Tribunal, Panchkula (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Devender Singh in a motor vehicular accident on 26.09.2014.

The Tribunal assessed income of the deceased at Rs.12,492/- per month but taken his income to be Rs.12,000/- per month after deducting Rs.492/- towards statutory deductions. After applying a cut of 1/3rd for personal expenses and multiplier of 17 with addition in income of 50% for future prospects, assessed loss of dependency to the tune of Rs.24,48,000.00. In addition, an amount of Rs.1 lakh for loss of consortium to widow and Rs.25,000/- for funeral expenses has been awarded making total compensation to Rs.25,73,000.00.

Counsel for the appellant - insurance company has assailed quantum of compensation primarily on two counts. The first submission made by counsel is that the Tribunal has extended benefit of future prospects to the extent of 50%, though the matter in this regard is pending consideration before a larger Bench of Hon'ble Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ 1239.*** Another submission made by counsel is that as per driving licence of the deceased produced on record, he was born on 17.03.1983 and as such, he was more than 31 years old at the time of death in September 2014, therefore, admissible multiplier would be 16 in place of 17.

Counsel representing the minor claimant (appointed to assist the Court on his behalf) has submitted that the Tribunal has not awarded any compensation for loss of love and affection to the child as well as mother of the deceased. Even no compensation has been awarded for loss of estate.

I have heard counsel for the parties, perused the paper book particularly the award impugned.

The deceased was a young person aged about 31 years. He left behind a young widow and a minor child aged 5 years, besides his parents who filed the application for compensation. The deceased was working as a Technical Auto Cartonarator (Prod) with Sarvotham Care Limited at Baddi (H.P.) at salary of Rs.12,492.00 per month. Had the deceased remained alive, he would not have stagnated at salary of Rs.12,492.00 per month. I find fortification to my observations from the fact that State Governments revise minimum wages at short intervals, may be quarterly or biannually. The mere fact that a reference is pending before Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till the judgment in ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170*** is varied or set aside. In this view of the matter, contention raised by the insurance company to deny future prospects is not meritorious and liable to be rejected.

This brings the Court to question of multiplier. The Tribunal has applied multiplier of 17 while considering age of the deceased to be 28 years. As per driving licence made available on record, date of birth of the deceased is 17.03.1983, therefore, he was more than 31 years old at the time of death. Taking into consideration judgment of Hon'ble the Supreme Court ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77,*** admissible multiplier would be 16. In this manner, loss of dependency comes to **Rs.23,04,000.00** (12,000 x 12 x 16 + 11,52,000 (50% future prospects) – 11,52,000 (1/3rd deductions).

Under conventional heads, compensation awarded by the Tribunal for loss of consortium to widow and funeral expenses is affirmed. The Tribunal has not awarded any compensation for loss of love and affection and care and guidance to the child and so also to mother for loss of love and affection. The minor child is awarded Rs.1 lakh for loss of love and affection of his father whereas mother shall be entitled to Rs.50,000/- for loss of love and affection of her son. The claimants are allowed Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to **Rs.26,04,000.00** (23,04,000.00 + 1,00,000 + 25,000+ 1,00,000 + 50,000 + 25,000) and additional amount is Rs.31,000.00 (26,04,000.00- 25,73,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

Disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

05.09.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No