IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.223 of 2016(O&M)

Date of decision: 14.11.2017

New India Assurance Company Ltd. …..Appellant

VERSUS

Hardeep Kaur and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Suvir Sheokand, Advocate for respondents No.4 and 5.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 29.04.2015 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Rashpal Singh in a motor vehicular accident that took place on 26.02.2013.

The Tribunal has assessed compensation to the tune of Rs.8,60,000/- payable with interest at the rate of 6% per annum from the date of petition till realisation.

Notice of motion was issued to decide the question as to whether if application for compensation was filed by four persons and one of them passed away during pendency of the petition, the deduction for personal expenses in the circumstances would be 1/3rd and not 1/4th in the light of enunciation laid down by Hon'ble the Apex Court **Smt. Sarla**

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Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.

Counsel for the appellant would contend that application for compensation was filed by the widow, minor son and parents of deceased Rashpal Singh. Mukhtiar Singh, father of the deceased and one of the applicants died during pendency of proceedings before the Tribunal and his name was deleted from array of claimants vide order dated 08.04.2015. It is further argued that there is no materials on record suggestive of the fact that Mukhtiar Singh, father of the deceased was dependent on income of Rashpal Singh, therefore, in the light of enunciation laid down in **Smt. Sarla Verma and others' case** (supra), admissible deduction for personal expenses should be 1/3rd in place of 1/4th.

Counsel representing respondents No.4 and 5 has not made any submissions.

The claimants have failed to cause appearance despite service and one of the claimants Akashdeep Singh is minor son of the deceased. As per the settled position in law, Court in appeal can examine all the aspects involved in the case and appreciate/re-appreciate the evidence on record in order to ensure whenever the judgment passed is, which ought to have been passed by the Tribunal. For this reason and coupled with the fact that law has imposed an onerous obligation on the Tribunal to assess just and reasonable compensation in its endeavor to make good the loss as the money can do, in absence of the claimants, correctness of the award needs to be examined.

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The Tribunal has assessed income of the deceased at Rs.5,000/- per month, applied multiplier of 18 and deducted 1/4th for personal expenses to compute loss of dependency at Rs.8,10,000/-. In addition, an amount of Rs.25,000/- has been awarded on account of loss to estate making total compensation to Rs.8,35,000/-. Another sum of Rs.25,000/- has been awarded for loss of consortium to the widow.

The deceased was 22 years old and left behind a young widow and child aged about 5 years besides his parents. His income has been assessed at Rs.5,000/- per month. The claimants are allowed increase in income for future prospects to the extent of 40% in the light of latest enunciation laid down by Hon'ble the Supreme Court in **SLP (Civil) No.25590 of 2014 titled National Insurance Company Ltd. Vs. Pranay Sethi and others, decided on 31.10.2017**.

The application for compensation was filed by the widow, child and parents of the deceased. Father of the deceased died during pendency of the petition and his name was deleted from the array of parties vide order dated 08.04.2015. There is no material on record that father of the deceased was dependent upon his income, therefore, I find merit in contention of the insurance company that admissible deduction for personal expenses would be 1/3rd. In this manner, loss of dependency comes to Rs.10,08,000 /-[Rs.10,80,000/- (Rs.5,000 x 12 x 18) + Rs.4,32,000/- (40% towards future prospects) – Rs.5,04,000 /- (1/3rd deduction towards personal expenses)].

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The claimants shall be entitled to following compensation under conventional heads in the light of judgment in **Pranay Sethi's case** (supra):-

Loss of consortium	Rs.40,000/-
Funeral expenses/last rites	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.10,78,000/- and the enhanced amount is Rs.2,18,000/-(Rs.10,78,000/- - Rs. 8,60,000/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable to Akashdeep Singh son of the deceased and the same shall be deposited in a Fixed Deposit Receipt till he attains the age of majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be paid to mother of the minor for meeting expenses on his education and living.

The appeal is disposed of in the aforesaid terms. A copy of the judgment be sent to the claimants to make them aware of their entitlement to additional amount. Nothing stated hereinbefore shall cause prejudice to the claimants if they file an appeal for enhancement.

NOVEMBER 14, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no

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