IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3662 of 2015 (O&M)
Date of Decision: September 18, 2017

National Insurance Co. Ltd.

..Appellant

Versus

Kuljeet Kaur and others

..Respondents

with

FAO No. 5963 of 2015 (O&M)

Kuljeet Kaur and others

..Appellants

Versus

Kanwal Deep Singh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: None for the appellants-claimants in FAO-5963-2015.

None for respondents no.1 to 5-claimants in FAO-3662-2015.

Mr. Rajneesh Malhotra, Advocate
for the appellant-insurance company in FAO-3662-2015 and
for respondent no.3-insurance company in FAO-5963-2015.

Mr. Rajinder Sharma, Advocate
for respondents no.1 & 2 in FAO-5963-2015 and
for respondents no.6 & 7 in FAO-3662-2015.

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<u>REKHA MITTAL, J.</u>

This order will dispose of FAO-3662-2015 and FAO-5963-2015 as these have emerged out of the same award dated 07.11.2014 passed by the Motor Accidents Claims Tribunal, Pathankot (hereinafter to be referred as the Tribunal), whereby compensation has been awarded in regard to death of Lt. Col. Kishan Singh in a motor vehicular accident that took place on 21.06.2009. The Tribunal assessed income of the deceased at Rs.45,000/- per month, deducted 1/3rd towards his personal expenses and applied multiplier of 7 to compute loss of dependency at Rs.25,20,000/-. In addition, an amount of Rs.9,500/- on account of general damages has been awarded, making total compensation to Rs.25,29,500/-, payable with interest @ 9% per annum from the date of petition till realization.

FAO-3662-2015 has been filed by the National Insurance Company Ltd. (hereinafter to be referred as the insurance company). The other appeal FAO-5963-2015 has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company, at the outset, would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal. It is argued that the deceased was a pensioner and his pension was Rs.45,415/- per month. Smt. Kuljeet Kaur, one of the claimants and widow of the deceased appeared in the witness box, tendered into evidence her affidavit Ex. PA but in her cross-examination, she has admitted that she is getting pension of Rs.16,000/- per month after the death of her husband. According to counsel, the Tribunal has erred by not deducting pension received by widow of the deceased by misplaced reliance upon Division Bench Judgment of the Madhya Pradesh High Court ***VimaladevyVs. Ram Chandra and others, 2010 ACJ***

569.

The second submission made by counsel is that the Tribunal has not deducted statutory liability qua payment of income tax. Another submission made by counsel is that the application for compensation was filed by the widow, one son and three daughters of deceased but in view of facts elicited in cross-examination of Kuljeet Kaur PW-1, all the children of deceased are married. The son of the deceased is working in Indian Navy and the daughters are residing separately from their mother, being married. It is further argued that in the given circumstances, Smt. Kuljeet Kaur is the only person dependent upon income of the deceased, therefore, admissible deduction for personal expenses of the deceased should be 50% in place of 1/3rd.

There is no representation on behalf of the claimants who were earlier being represented by Mr. Rajeev Dev Sharma, Advocate. Counsel representing respondents no.6 and 7 - driver and owner respectively of the offending vehicle has not advanced any arguments.

I have heard counsel for the insurance company, perused the paper book particularly the award and certified copy of statement of Kuljeet Kaur made available during the course of hearing.

The deceased was 65 years old at the time of occurrence. He was a pensioner having retired as Lieutenant Colonel. As per pension record produced before the Tribunal, Kishan Singh was drawing pension @ Rs.45,415/- per month. Kuljeet Kaur PW-1 in her cross-examination has admitted that she is getting pension of her husband at Rs.16,000/- per month. In the case at hand, the deceased was not in active service of army when he passed away and was drawing pension and part of the pension is admissible to widow of the deceased after his death, therefore, the widow cannot be allowed benefit of pension paid to the deceased as well as Rs.16,000/- per month towards pension being paid to her. If the claimants are allowed benefit of pension at Rs.45,415/- per month received by the deceased plus Rs.16,000/- received by the widow after death of Shri Kishan Singh, it would amount to giving double the benefit of pension and enrichment of the claimants. Under the circumstances, pension received by the widow is to be deducted from the pension that was being paid to the deceased for calculating loss of dependency.

The learned Tribunal has wrongly placed reliance upon Division Bench judgment of the Madhya Pradesh High Court to negate plea of the insurance company that pension payable to the widow is liable to be deducted. In the referred authority, the deceased was working as ASI at a salary of Rs.6,616/- per month and his family was allowed family pension under the relevant service rules. There is no dispute about the preposition of law laid down in the referred authority but the same cannot be applied to the facts of the case in hand wherein the deceased himself was a pensioner. Income tax on the amount of Rs.5,44,980/- (Rs.45,415/-

x 12), at the relevant time comes to Rs.59494/-. After deducting Rs.16,000/- paid to the widow towards pension as well as tax liability, loss of dependency per annum comes to Rs.2,93,486/-.

The Tribunal has deducted 1/3rd for personal expenses of the deceased. Counsel for insurance company has not cited any judgment to substantiate his contention that for the purpose of deduction qua personal expenses of the deceased, the same analogy is to be applied as is applicable in the case of an unmarried person even if the deceased has left behind only the spouse being dependent. On the contrary, as the deceased has left behind his widow aged approximately 60 years, admissible deduction would be 1/3rd and not 50%. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.** After deducting 1/3rd for personal expenses, annual income for loss of dependency comes to Rs.1,95,657/- (Rs.2,93,486/- - Rs.97,829/-). After applying a multiplier of 7, loss of dependency comes to Rs.13,69,599/-.

The Tribunal has awarded an amount of Rs.9,500/- on account of general damages. The same is set aside. However, the claimants shall be entitled to compensation under conventional heads, detailed here under:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Loss of consortium to the widow	Rs.1,00,000/-
2.	Expenses on funeral and last rites	Rs.25,000/-
3.	Loss of love and affection to the children (to be shared equally)	Rs.1,00,000/-

	TOTAL	**Rs.2,25,000/-**

In view of the above, total compensation comes to Rs.15,94,599/-. As such, compensation awarded by the Tribunal is reduced to the extent of Rs.9,34,901/- (25,29,500/- - 15,94,599/-). In case the insurance company has already paid compensation to the claimants, it shall recover the excess amount from the claimants by filing an appropriate application before the Tribunal.

For the foregoing reasons, both the appeals stand disposed of.

(REKHA MITTAL)
JUDGE

September 18, 2017
sunil/d.gulati

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No