In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:4.9.2017

FAO No. 6 of 2013

New India Insurance Company Limited
---Appellant

vs.

Bhupinder Kaur and others
---Respondents

FAO No. 7990 of 2014

Bhupinder Kaur and others
---Appellants

vs.

Ravi Kumar and others
---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R.S.Madan, Advocate
for the appellant in FAO-6 of 2013
Mr. Vipin Mahajan, Advocate
for the appellants in FAO-7990 of 2014
for respondent Nos. 1 to 4 in FAO-6 of 2013

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Rekha Mittal, J.

This order will dispose of FAO No. 6 of 2013 and 7990 of 2014 as these have emerged out of the same award dated 8.8.2012 passed by the Motor Accidents Claims Tribunal, Gurdaspur (in short "the Tribunal") whereby compensation has been awarded on account of death of Karam Singh in a motor vehicular accident that took place on 7.1.2010.

The Tribunal assessed income of the deceased at Rs. 24,525/- per month, deducted Rs. 15,300/- p.a. towards income tax and 1/4th for personal expenses of the deceased and adopted a multiplier of 13 to compute loss of dependency at Rs. 27,20,250/-, held to be payable with interest at the rate of 6% per annum.

The parties shall be referred to as the claimants and the insurance company for the sake of convenience.

CM-64-CII-2013

Prayer in this application is for condonation of delay of 07 days in filing the appeal.

In view of the averments made in the application and arguments advanced by learned counsel for the applicant, the application is allowed and delay of 07 days in filing the appeal is condoned.

FAO NO. 6 of 2013

Counsel for the insurance company would urge that an application under Order 41 Rule 27 of the Code of Civil Procedure (in short "the Code") has been filed for permitting the insurance company to adduce additional evidence by producing document Annexure A-1. It is argued that report of the investigator dated 20.10.2011 (Annexure A-1) would go a long way to prove that driving licence bearing DL No. 2997/N dated 5.9.2008 was issued in the name of Balwinder Singh son of Ram Singh and not in the name of Ravi Dass son of Sh. Karam Chand-respondent No. 5 and driver of the offending vehicle i.e. truck bearing No. PB-06-2433. It is further submitted that a serious prejudice shall be caused to the insurance company in case it is not permitted to adduce additional evidence to discharge onus of issue No. 3 framed by the Tribunal.

Counsel representing the claimants, on the contrary, would urge that even if the insurance company is allowed to place on record verification report Annexure A-1, the same is not sufficient to discharge onus of issue No. 3. Further argued that even if the driver was not possessing a valid driving licence, the insurance company cannot escape its liability to pay compensation to the claimants.

The application for compensation was filed in April 2010 and was decided by the Tribunal on 8.8.2012. There is not even a whisper in the application for additional evidence as to why the insurance company could not produce this report when the proceedings were pending before the Tribunal. An application for additional evidence before a Court in Appeal by invoking Order 41 Rule 27 of the Code cannot be allowed on the mere asking of a party. Conversely, the applicant-appellant has to satisfy either of the conditions envisaged under Order 41 Rule 27 of the Code to assert its right to adduce additional evidence. This apart, the report Annexure A-1 is not per se admissible in evidence and cannot be used against the insured unless he is provided with an opportunity to cross examine the witness who has prepared the report. There is no such plea raised in the application that the insurance company wants to examine the person who prepared the report Annexure A-1. Under the circumstances, application filed by the insurance company for adducing additional evidence is not meritorious and liable to be dismissed.

Ordered accordingly.

FAO Nos. 6 of 2013 and 7990 of 2014

Counsel for the claimants would urge that income of the deceased assessed by the Tribunal is on lower side. The Tribunal has not allowed benefit of increase in income for future prospects to the extent of 30%.

The claimants produced on record salary certificate Ex. C-3 of deceased Karam Singh who was working as Assistant Line Man with the Punjab State Electricity Board. Gross salary of the deceased was Rs.27,847/- per month which included basic pay and various allowances detailed therein. The Tribunal has taken his income at Rs. 24,525/- per month by excluding the allowances namely HRA, Rural allowance, Medical allowance and Cycle allowance totaling Rs. 3322/-. As a matter of fact, only two allowances which were personal in nature for the deceased namely Medical allowance of Rs. 500/- and Cycle allowance of Rs. 300/- are to be deducted for computing monthly income of the deceased. In this manner, monthly income of the deceased would be Rs.27,047/- (rounded off to Rs. 27,050/-) and the annual income comes to Rs. 27,050 x 12 = 3,24,600/-. After deducting tax liability to the tune of Rs.18,920/- and 1/4th for personal and living expenses of the deceased, loss of dependency comes to Rs.2,29,260/-. The Tribunal has rightly applied a multiplier of 13, therefore, loss of dependency comes to Rs. 29,80,380/-.

The deceased was born on 15.5.1959. He was more than 50 years of age at the time of death. In view of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**, claimants are not entitled to benefit of increase in income for future prospects.

The Tribunal has not awarded any compensation under conventional heads. Failure of the Tribunal to allow compensation under conventional heads is grossly erroneous and liable to be condemned. Under conventional heads, the claimants shall be entitled to following compensation:-

Sr.No.	Head under which compensation is awarded	Amount
1.	Loss of consortium to the widow	Rs. 1,00,000/-
2.	Loss of love and affection, care and guidance for the children	Rs. 2,25,000/- to be shared equally
3.	Expenses on funeral /last rites	Rs. 25,000/-
4.	Loss of estate	Rs. 25,000/-

The total compensation is **Rs.33,55,380/-** and the additional amount is **Rs.6,35,130/-.** The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization except for the period of delay, payable to the claimants in the following ratio:-

Bhupinder Kaur widow - 40%

Sukhchain Singh -}60% in equal ratio
Sukhbir Singh and Baljit Kaur }

The amount falling to the share of the children shall be deposited in a fixed deposit receipt till they attain the age of majority or for a period of three years whichever is later. 50% of the amount falling to share of the widow shall also be deposited in a fixed deposit receipt for a period of three years. The claimants shall not be entitled to raise any loan against the FDRs.

The appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

4.9.2017
paramjit

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