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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO-6053-2013 (O&M)
Decided on : August 02, 2017**

NATIONAL INSURANCE COMPANY LTD*APPELLANT*
VERSUS
NARESH KUMAR AND OTHERS*RESPONDENTS*

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Aseem Aggarwal, Advocate
for the appellant.
Mr. J.S. Chahal, Advocate
for respondents No.1 to 4.

REKHA MITTAL, J (ORAL)

The present appeal filed by the Insurance Company directs challenge against award dated 16.07.2013 passed by the Motors Accidents Claims Tribunal, Kurukshetra whereby compensation has been awarded in favour of Naresh Kumar and others (claimants) in regard to death of Sushma in a motor vehicular accident that took place on 07.04.2010.

The sole submission made by counsel for the appellant is that the Tribunal has adopted a multiplier of 17 by considering Sushma to be less than 30 years of age but as a matter of fact, Sushma was 45 years old at the time of death and the admissible multiplier would be 14 in place of 17. To substantiate his contention, it is argued that in the ration card prepared by family of Naresh Kumar, husband of the deceased, Sushma was recorded to be 40 years old in the year 2005, therefore, she was more than 45 years of age in the year 2010. It is further submitted that the eldest daughter of the couple is shown to be 10 years old in the ration card prepared on 05.07.2005. Naresh Kumar in his testimony has deposed that

Ruksana, elder daughter of the couple is 16-17 years old which further falsifies plea of the claimants that the deceased was less than 30 years of age. Another submission made by counsel is that the document (Ex P-12) has not been proved by a witness on the basis of record.

Counsel representing the claimants, on the other hand, has submitted that in view of documentary evidence namely the certificate (Ex P-12) and postmortem report of the deceased, she has rightly been held to be less than 30 years of age to apply multiplier of 17. He has further argued that the Tribunal has not awarded any compensation for loss of love and affection to children of the deceased. A consolidated sum of Rs.20,000/- awarded under conventional heads needs re-look and enhancement.

Counsel for the appellant, in reply, has submitted that as the claimants have not preferred an appeal seeking enhancement of compensation, they cannot be heard to say that compensation assessed by the Tribunal is liable to be enhanced on any count whatever.

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

Before advertng to submissions made by counsel for the parties, it is appropriate to mention that the Tribunal has an obligation to assess just and reasonable compensation to make good the loss as the money can do. The insurer has filed the appeal to challenge the award qua quantum of compensation. The Court of appeal can examine correctness of assessment made by the Tribunal in its efforts to award just and reasonable compensation. Under the circumstances, non-filing of an appeal by the claimants cannot stand in the way for awarding compensation which

ought to have been paid to the claimants.

The Tribunal has assessed value of services of the deceased at Rs.4,000/- per month, deducted 1/4th towards personal expenses, adopted a multiplier of 17 to compute loss of dependency at Rs.6,12,000/-. In addition, an amount of Rs.20,000/- for loss of consortium, love and affection to husband, funeral expenses and loss of estate has been awarded. The claimants have been awarded an amount of Rs.12,299/- towards expenses incurred qua medical treatment of the deceased till she remained alive. The total compensation assessed by the Tribunal is Rs.6,53,900/- payable with interest @ 7.5% per annum from the date of petition till realization.

The Tribunal has applied a multiplier of 17 by holding that the deceased was less than 30 years of age. Counsel for the claimants has not disputed that as per ration card of family of the deceased, deceased was shown to be 40 years of age in July, 2005 and eldest daughter of the family was 10 years old at that time and she was 16-17 years old in 2011. The claimants have not examined any witness to prove authenticity of certificate (Ex. P-12). There is no clear and cogent evidence adduced by the claimants to prove date of birth of the deceased. In view of age of eldest child of the couple which has been correctly recorded in the ration card, age of the deceased is to be taken as 45 years on the basis of her age mentioned in the ration card. Under the circumstances, admissible multiplier is 14 in place of 17.

The Tribunal has deducted 1/4th towards personal and living expenses of the deceased. As income of the deceased has been assessed on the basis of value of her services as a house-maker, no such deduction is

permissible in the light of Division Bench judgment of this Court ***Paramjit Singh v. Dilbagh Singh alias Bagga*** (FAO 3310 of 2012 decided on 16.05.2013).

The Tribunal has not awarded any compensation for loss of love and affection to children of the deceased. The deceased left behind three minor children, one daughter and two sons, in a sudden shock. They have not only been deprived of love and affection of their mother but also her care and guidance. It has come on record that after death of Sushma, Naresh Kumar has performed marriage and the children would now be at the mercy of their step mother. They are allowed an amount of Rs.2,25,000.00 (to be shared equally) for loss of love and affection of their mother. The claimants shall be entitled to an amount of Rs.25,000.00 for expenses of funeral. Naresh Kumar, though has re-married, is allowed Rs.20,000/- for loss of consortium. In this manner, total compensation comes to **Rs.9,54,299.00** (4,000 x 12 x 14 (6,72,000) + 12,299.00 + 2,25,000.00 + 25,000.00 + 20,000.00) and additional amount is **Rs.3,00,399.00** (9,54,299.00-6,53,900.00) which shall carry interest at the rate of 7.5% per annum from the date of petition till realization. Statutory amount, if any, be remitted to the Tribunal .

The appeal is partly allowed in the aforesaid terms.

August 02, 2017

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(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No