IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 9362 of 2014 (O&M)
Date of decision: 19.09.2017

New India Assurance Company Limited

...Appellant

versus

Asha Devi and others

...Respondent

2. FAO No. 9260 of 2014 (O&M)

New India Assurance Company Limited

...Appellant

versus

Prabha Rani and others

...Respondent

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Ashwani Arora, Advocate
for respondent Nos. 1 to 4.

Mr. Ripu Daman AAG Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

This order will dispose of two appeals involving the death of two victims of motor accident while travelling in the same vehicle a 'Tata Sumo'. The accident took place in Dera Bassi. Though decided by a common order, the two cases are dealt with separately.

Having heard learned counsel for the parties at some length in the death case of a 33 year old man employed as Area Sales Manager in a private limited companying and died in the motor accident on ill-fated 22.05.2013. This Court has no doubt that the compensation awarded under the 10 heads tabulated in paragraph 14 of the award of the Motor Accident Claims Tribunal, SAS Nagar, Mohali decided on 08.07.2014 is perfectly justified and in order. The deceased was a salaried employee and there is sufficient proof by way of salary slips on the record. The suspicion created by special allowance of Rs. 16,000/- per month which doubt on income was apparently cause for issuing notice of motion in the insurance appeal deserves to be put aside and accepted as a part of the income/financial package that the employee earned as salary.

Moreover, the issue regarding this amount was not raked up before the Tribunal during the recording of evidence or by production of any counter-documentary evidence. If insurance company disputed this amount, this burden was on it to discharge, when the insurance company argues that the amount should be deducted from the income to determine compensation.

I would, therefore, not accept the argument advanced before me to downgrade the compensation and will rather take the entire income package in the exhibited salary slips and receipts as evidence in the Tribunal record (Exb.P17) etc. as unimpeachable documents where the total monthly income is recorded as Rs. 34, 750/- by the employer open to audit. The salary slip is explicit when it does not speak of 'income' but the employs the word 'earnings' and this aspect is an additional reason certifying income which nicety has not occurred in the mind of the learned Tribunal or the counsel appearing for ti till this Court today at the hearing.

The total compensation of Rs. 73, 65, 500/- (rounded off) has been awarded by the learned Tribunal. Taking the annual income at

Rs. 3,95,300 after deducting income tax has properly been arived at This amount would receive 50% increase towards future prospects making the total sum of Rs. 5,92,950/- and to this amount a 1/4th deduction has been applied bringing down the amount to Rs. 4,44,713/. By adopting the multiplier of 16 according to age at the time of death the loss of dependence has been assessed at Rs. 71, 15, 408/- and this sum is acceptable in view of the law laid down in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, (2009) 2 SCC (Civil) 770 and Rajesh and others Vs. Rajbir Singh and others, 2013 ACJ 1403 (SC). The loss to the estate of the deceased has been granted in a nominal amount of Rs. 25,000/- and an equal amount has been added towards funeral expenses by the learned Tribunal to make the grand total in the wisdom of the Tribunal.

Though the overall award is appreciable and well-reasoned but there may be a minor deficiency in award of loss of care and guidance to minor child which should not be consolidated as Rs. 1,00,000/- since there were two of them the deceased left behind and accordingly Rs. 1,00,000/- more deserves to be added to the package. Though the claimants are not in appeal, but, I would exercise jurisdiction under order 41 Rule 33 CPC to bring Rs. 1,00,000/- more to the claimants for the second minor child. In this manner, the amount would increase to Rs. 74, 65, 500/-. To round off the entire figure, the balance sum of Rs. 34,500/- deserves to be added to loss of estate raising the amount to Rs. 60,000/-.

For the reason aforestated, I find no merit in this appeal and the same is dismissed. The award is modified and henceforth the award be read as Rs. 75,00,000/- and be executable accordingly. The amount deposited in the Executing Court will be disbursed to the claimants less the amount of Rs. 40,00,000/- which was allowed to be paid by this Court in the first interim order by staying the balance amount. The statutory amount of Rs. 25,000/- deposited to entertain this appeal is ordered to be returned to the Tribunal to be adjusted in the compensation.

<u>FAO No. 9260 of 2014</u>

I have heard Mr. Ashwani Talwar, Advocate for the insurance company in this accompanying appeal against injured claimant which case is dealt with in para 14 and 15 of the award dated 08.07.2014 passed by the same Tribunal on the same date, i.e. 08.07.2014 but by separate orders. The age of deceased was 48 years at the time of accident resulting in injury. He was a property dealer but has no tax receipts to prove his income. He had three major sons who Mr. Talwar submits could not be dependent on him. His income has been assessed at Rs. 12,000/- per month by drawing proper presumption of taking income less than the minimum taxable. Accordingly, income has been assessed reasonably at Rs. 1,44,000/- per annum to which 30% has been added towards future prospects and to this sum deduction of $1/4^{th}$ is applied. There is no quarrel with applying 13 as multiplier to multiplicand of 48. Accordingly, total income of the deceased has been calculated in a sum of Rs. 1, 87, 200/-

per year. The amounts awarded towards loss of consortium, loss to estate and funeral expenses have been properly assessed. I would not apply the standard conventional head in this case because neither income nor any future prospects in the present appeal is documented evidence. The rate of interest is also on the lower side and is bound to be increased in the present appeal, as is usually being granted by the Tribunals in these claim cases, if not more. It is though the strong contention of Mr. Talwar that in the case of non-employed persons 30% towards future prospects is excessive and should not at all be awarded.

Mr. Ashwani Arora, Advocate counters these contentions arguing that the law in *Rajesh vs. Rajbir* (Supra) holds that even though some aspects of compensation are not under reconsideration by the larger Bench of the Supreme Court they deserve to be paid. Since there is an interim stay by the Supreme Court that in cases of future prospects for non-salaried persons, it would then be for the Tribunal to give effect to the stay order by making the insurance company liable to deposit the amount calculated towards future prospects in a interest bearing fixed deposit nationalized bank. The amount determined for future prospects by the executing court will be deposited by the company and kept in FDR to await the final decision of the Supreme Court in the pending issue. The balance is required to be deposited and reimbursed to the claimants, if not already.

In view of the above, the instant appeal is disposed of with the observations and conclusions aforestated.

(RAJIV NARAIN RAINA)
JUDGE

September 19, 2017
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Whether speaking/reasoned : *Yes*
Whether reportable : *No*