IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 8247 of 2015 (O&M)
Date of decision: 05.09.2017

Reliance General Insurance Co. Limited ....*Appellant*

Versus

Geeta and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Sanjeev Kodan, Advocate
for the appellant
Mr. Rajesh Dhankar, Advocate for
Mr. Balkar Singh, Advocate
for the respondents

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 14.08.2015 passed by the Motor Accidents Claims Tribunal, Sonepat (in short, 'the Tribunal') whereby compensation has been awarded in regard to death of Bondu alias Baudhu Prasad Yadav in a motor vehicular accident that took place on 22.08.2013.

The Tribunal assessed income of the deceased at Rs.8,400 per month, deducted $1/4^{th}$ for personal expenses, applied multiplier of 15 and added 50% for future prospects to compute loss of dependency at Rs.17,01,000/-. In addition, Rs.1 lakh for loss of consortium to widow, Rs.1 lakh for loss of care and guidance to minor children and Rs.25,000/- for funeral expenses has been awarded making total compensation to Rs.19,26,000.00.

Counsel for the appellant has assailed quantum of compensation primarily on two counts. The first submission made by counsel is that as per document Ex.P7, net salary of the deceased for the month of August 2012 is Rs.5,220/-, therefore, compensation is liable to be assessed on the basis of income at Rs.5,220/-. The second submission made by counsel is that the Tribunal has allowed benefit of increase in income for future prospects to the extent of 50% despite the fact that the matter in this regard is pending consideration before a larger Bench of Hon'ble the Supreme Court of India in view of reference made in ***National Insurance Company Limited v. Pushpa*** *(SLP (c) No. 16735 of 2014, decided on 02.07.2014)* and the observations made by the Apex Court in ***Shashikala and others v. Gangalakshmamma and another, 2015 ACJ 1239.*** Another submission made by counsel is that the Tribunal has awarded interest @ 8% per annum but the same should be 6% per annum.

Counsel representing the respondents/claimants has supported assessment of loss of dependency but would contend that compensation awarded under conventional heads needs enhancement.

Counsel for the insurance company, in reply, would contend that as the claimants have not preferred an appeal, they cannot assert for grant of compensation more than what has been awarded by the Tribunal.

I have heard counsel for the parties, perused the paper book and the records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to mention that the Tribunal and the Courts are under an obligation to assess just compensation under Section 166 of the Motor Vehicles Act, 1988. It has been settled by catena of judgments rendered by Hon'ble the Supreme Court that compensation assessed by the

Court should make good the loss suffered by the victim family. Keeping in view the legislative intent behind the provisions providing for compensation coupled with the provisions of Code of Civil Procedure, award challenged before this Court by filing statutory appeal by the parties or either of them can be examined from the point of view of the appellant as well as respondent (s).

The Tribunal has assessed income of the deceased on the basis of testimony of PW3, a representative from GCF Logistics Private Limited, New Delhi. Perusal of the document Ex.P7 would make it evident that gross salary of the deceased was Rs.8,528/- but for the month of August 2013, he was paid Rs.6,052.00 up to 22.08.2013 because of his unfortunate demise in road accident. The deductions made from his salary cannot be excluded for computing loss of dependency, as such, findings of the Tribunal assessing income of the deceased at Rs..8,528/- per month cannot be faulted with and ordered to be affirmed.

The Tribunal has allowed benefit of increase in income qua future prospects to the extent of 50% in the light of judgment of Hon'ble the Supreme Court ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170***. The deceased was a young person aged 35 years and left behind a family consisting of his widow and four minor children, held to be dependent on his earning. There is nothing on record suggestive of the fact that the deceased was suffering from any disability afflicting his capacity to work and earn livelihood for himself and his family. He would not have stagnated at income of Rs.8,528/- per month, had he remained alive particularly in the face of the fact that State Governments revise minimum wages at short intervals, may be quarterly or biannually. That being so, the mere fact that a reference is pending before Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till the judgment in Rajesh's case (supra) is varied or set aside.

The compensation awarded by the Tribunal for loss of consortium to widow and funeral expenses is affirmed. The Tribunal has awarded an amount of Rs.1 lakh for loss of love and affection, care and guidance for minor children of the deceased. The deceased left behind two minor daughters and two minor sons and he passed away at the age of 35 years. Under the circumstances, the children shall be entitled to an amount of Rs.3 lakh (to be shared equally) for loss of love and affection and care and guidance of their father. The claimants shall be entitled to Rs.25,000.00 for loss of estate. Plea of the insurance company with regard to rate of interest is not well founded and liable to be rejected.

In view of the above, claimants shall be entitled to additional amount of Rs.2,25,000/ with interest @ 7.5% per annum from the date of petition till realization, payable to minor children in equal proportion, to be deposited in Fixed Deposit Receipts for a period of three years or till they attain the age of majority, whichever is later. However, interest on FDRs shall be payable to their mother for meeting expenses of the children. The claimants shall not raise any loan against FDRs.

The appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

05.09.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No