IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 84 of 2015 (O&M)
Date of Decision: November 21, 2017

Bajaj Allianz General Insurance Co. Ltd.

..Appellant(s)

Versus

Seema Devi and others

..Respondent(s)

with

FAO No. 2513 of 2015 (O&M)

Seema Devi and others

..Appellant(s)

Versus

Bishan Dass and another

..Respondent(s)

FAO No. 3926 of 2015 (O&M)

Seema Devi

..Appellant(s)

Versus

Bishan Dass and another

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Akash Sridhar, Advocate for
Mr. Ashwani Talwar, Advocate
for the appellant-Insurance Company in FAO-84-2015 and
for respondent no.2-insurance company in FAO-2513-2015 and
FAO-3926-2015.

Mr. Rajeev Dev Sharma, Advocate
for the appellant(s) in FAO-2513-2015 and FAO-3926-2015 &
for respondents no.1 to 4 in FAO-84-2015.

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ANITA CHAUDHRY, J.

These are three appeals arising out of an accident, which took place on 18.02.2014. One appeal is by the insurance company on the quantum while two appeals are by the claimants (one by the legal heirs of Vijay Kumar deceased and the other by the mother of an 8 year old child). In this accident Vijay Kumar and his daughter had lost their lives. Claimant Seema Devi is the widow of Vijay Kumar and mother of Isha. I propose to take up all the appeals together.

FAO No.84 of 2015
FAO No.2513 of 2015

Giving the factual aspects first. Vijay Kumar was 42 years old and was stated to be running a barbar shop. His income was stated to be Rs.20,000/- per month. The Tribunal considered the income to be Rs.20,000/- per month and made a deduction of 1/3rd and applied the multiplier of 14 and allowed Rs. 5,000/- each on four heads i.e. loss of consortium, loss of love & affection, loss of estate and funeral expenses and awarded a sum of Rs. 22,60,000/-.

The submission on behalf of the appellant-insurance company (in FAO-84-2015) is that the amount awarded is exorbitant and the Tribunal had taken the income as was stated orally by the widow without any basis and when there was no evidence, the minimum wages should have been taken.

The submission on behalf of the claimants (who are seeking enhancement in the compensation) is that the income was rightly taken and an addition of future prospects should be made and the amount allowed as per the latest judgment rendered by Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in SLP (Civil) No.25590 of 2014 on the conventional heads should be added and a lesser amount was awarded.

Claimants had failed to lead evidence with respect to the income and the Tribunal should not have considered the income of Rs.20,000/- without any proof. The minimum wages in 2014 were Rs.6,247/- per month for the un-skilled and Rs.7,027/- for the semi-skilled. Therefore, I would take the income to be Rs.7,027/- per month and make an addition of 25% as per Pranay Sethi's case (supra). The addition would be Rs.1756/- and the total income would be Rs.8,783/-. After deducting $1/3^{rd}$ towards personal expenses, the amount available for the family would be Rs.5,856/- per month and the compensation would be Rs.5,856 x 12 x 14 = Rs.9,83,808/-. To this, Rs.15,000/- is added for loss of estate, Rs.15,000/- is for funeral expenses and Rs.40,000/- for loss of consortium and the total compensation that was payable would be Rs.10,53,808/-. This is the amount which was payable by the insurance company with interest as awarded by the Tribunal.

The appeal (**FAO No.84 of 2015)** filed by the insurance company is partly allowed whereas the appeal **(FAO No.2513 of 2015)** filed by the claimants is dismissed.

<u>FAO No.3926 of 2015</u>

A claim petition had been filed by Seema seeking compensation for the death of her 8 year old daughter. The Tribunal referred to Lata Wadhwa v. State of Bihar and also Oriental Insurance Company Ltd. Vs. Saroj Rani @ Urmila and took the notional income at Rs.15,000/- per annum but made a deduction of Rs. 5,000/- towards personal expenses and applied the multiplier of 15 and calculated the loss to be Rs.2 lacs.

The submission on behalf of the appellant is that when the notional income is taken as Rs.15,000/-, there should have been no deduction and some amount be allowed for loss of love and affection.

The other side fairly concedes that there could be no deduction when the notional income was taken but it was urged that no further amount can be added to it.

So far as the notional income is concerned, it was rightly fixed at Rs.15,000/- per annum and there could be no deduction and compensation when calculated after applying multiplier of 15 would come to Rs.2,25,000/- but in view of the judgment rendered by Hon'ble Supreme Court in ***R.K. Malik and another Vs. Kiran Pal and others*** 2009(14) SCC 1, an addition towards non-pecuniary damages should be made and the addition would be Rs.75,000/- and the total amount payable would be Rs.3,00,000/- with interest as awarded by the Tribunal.

The appeal (**FAO No.3926 of 2015**) is partly allowed.

(ANITA CHAUDHRY)
JUDGE

November 21, 2017
Sunil

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