IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.961 of 2015(O&M)

Date of decision: 19.9.2017

National Insurance Company Ltd. …..Appellant

VERSUS

Rama Shankar and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Sidhu, Advocate for the appellant.

Mr. Mohan Rana, Advocate for
Mr. S.K. Panwar, Advocate for respondents No.1 and 2.

Mr. Gobind Dhanda, Advocate for respondents No.3 and 4.

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REKHA MITTAL, J. (Oral)

The National Insurance Company Ltd. (hereinafter to be referred as the Company) is in appeal to assail award dated 01.11.2014 passed by the Motor Accidents Claims Tribunal, Panchkula (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Ashok Kumar in a motor vehicular accident that took place on 24.12.2013.

Counsel for the Company, at the outset, would inform that the appeal has been preferred to assail compensation assessed by the Tribunal.

The Tribunal assessed income of the deceased at Rs.8,200/- per month, added 40% for future prospects, deducted 50% towards personal expenses and applied a multiplier of 15 to compute loss of dependency at Rs.10,35,000/-. In addition, an amount of Rs.25,000/- for loss of estate and another Rs.25,000/- for funeral expenses has been awarded making total compensation to Rs.10,85,000/- payable with interest at the rate of 7.5% per annum from the date of petition till realisation.

Counsel for the Company would urge that the Tribunal has wrongly assessed income of the deceased at Rs.8,200/- per month. It is argued that Gaurav CW-2 examined by the claimants did not produce any record maintained by M/s DSSM Logistics Pvt. Ltd. to establish that the deceased was working as a courier boy with the aforesaid company at a salary of Rs.8,700/- per month. Further submitted that the salary certificate Ex.CW2/A and computer generated account with regard to salary of the deceased from September 2012 to March 2013 (Mark-A) do not get substantiated from account books register of employees etc. maintained by the aforesaid company, sufficient to create a doubt if the deceased was working as a courier boy with the company and his salary was Rs.8,700/- per month. It is submitted that in absence of any clear and cogent evidence on record with regard to income of the deceased, his income may be assessed on the basis of minimum wage available to an unskilled labour at the relevant time, fixed by the State of Haryana.

Another submission made by counsel is that the Tribunal has allowed benefit of increase in income to the extent of 40% but the matter with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. vs. Pushpa, SLP (C) No.16735 of 2014, decided on 02.07.2014.**

Counsel representing the claimants has supported findings of the Tribunal whereby income of the deceased has been assessed at

Rs.8200/- per month. He has argued that as the deceased was less than 40 years of age, addition for future prospects should be 50% and not 40%. In addition, it is argued that compensation awarded under conventional heads needs enhancement.

Gaurav CW-2 appeared in the witness box alleging himself to be the Director of M/s DSSM Logistics Pvt. Ltd. He tendered into evidence his affidavit Ex.CW2/A by way of examination in chief. In his cross examination, he has deposed that they maintain the account books, salary register of employees as well as attendance register but he has not brought any of the documents. He has further admitted that their company is not registered with Employees State Insurance Company and they do not deduct provident fund from salary of the employees. The two documents brought on record by the witness are computer generated salary certificates and account of salary Mark-A. As has been rightly argued by counsel for the insurance company, the documents brought on record by Gaurav CW-2 do not get substantiated from the records stated to be maintained by the company. Under the circumstances, income of the deceased would be assessed on the basis of minimum wage of an unskilled labour coupled with educational qualification of the deceased. The deceased was post-graduate in Economics. There is nothing on record suggestive of the fact that the deceased was suffering from any disability rendering him unable to work and earn livelihood for himself and his family. Under the circumstances, income of the deceased is assessed at Rs.7,000/- per month.

The deceased was 33 years old at the time of his unfortunate demise. As has been noticed hereinabove that there is nothing on record suggestive of the fact that the deceased had any disability to impair his capacity to work and earn for himself and his family. The deceased would not have stagnated at income of Rs.7,000/- had he remained alive. I get fortified in my observations from the fact that the State Governments revise minimum wages at short intervals may be quarterly or biannualy. The mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court is not sufficient to deny the benefit of future prospects till the judgment in **Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170** is varied or set aside. After extending benefit of future prospects to the extent of 50%, income of the deceased comes to Rs.10,500/- per month. The Tribunal has rightly deducted 50% towards personal and living expenses of the deceased as he was bachelor. The loss of dependency comes to Rs.5,250/- per month. The deceased was 33 years old, therefore, admissible multiplier would be 16 in the light of ratio laid down in judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77** and **Munna Lal Jain and others versus Vipin Kumar Sharma and others, 2015(3) RCR (Civil) 447.** In this manner, loss of dependency comes to Rs.10,08,000/- (Rs.5250/- x 12 x 16).

The compensation awarded by the Tribunal for funeral expenses and loss of estate to the tune of Rs.50,000/- is affirmed. The mother of the deceased is awarded an amount of Rs.50,000/- for loss of love and affection of her son.

In view of the above, total compensation comes to Rs.11,08,000/- and the additional compensation is Rs.23,000/-, payable with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is disposed of accordingly.

SEPTEMBER 19, 2017 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no