IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 3905 of 2017 (O&M)
Date of decision: 12.09.2017

The New India Assurance Company Limited ....*Appellant*

Versus

Chander Kala and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Banni Thomas, Advocate
for the appellant
Mr. Dheeraj Narula, Advocate
for the caveators/claimants/respondents

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against award dated 28.03.2017 passed by the Motor Accidents Claims Tribunal, Sirsa (herein after to be referred as 'the Tribunal') whereby compensation (Rs.22,90,500) has been awarded in regard to death of Rajveer son of Phoola Ram in a motor vehicular accident that took place on 07.05.2016.

Counsel representing the insurance Company, at the outset would inform that the appeal has been preferred to challenge quantum of compensation assessed by the Tribunal. To bring home his contention, counsel has two fold submissions to make. The first argument advanced by counsel is that the Tribunal has wrongly assessed income of the deceased at Rs.9,000.00 per month without any cogent evidence that the deceased was a skilled worker. The Tribunal has further extended benefit of increase in income qua future prospects to the extent of 50% though the matter in this regard is pending consideration before a larger Bench of Hon'ble 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.***

Counsel representing the caveators/claimants has supported the award with the submission that the Tribunal on the basis of evidence adduced by the claimants in the shape of testimony of Lalit Kumar (PW1), a Clerk from the office of Assistant Director Industrial Safety and Health, Sirsa and Mahender Singh (PW5) has rightly recorded a finding that the deceased was a Carpenter, thus, a skilled person. Further submitted that in May 2016, minimum wage of a skilled person was more than Rs.9,000.00 per month. It has further been argued that pendency of reference before a larger Bench of Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till the judgment ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170*** is set aside in appropriate proceedings. He has further submitted that compensation awarded under conventional heads needs enhancement.

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

The claimants examined Lalit Kumar, a clerk from the Govt. Department to prove certificate Ex.PW1/A that makes it evident that deceased Rajveer was a registered Carpenter. Mahender Singh (PW5) was examined to prove that the deceased was a Carpenter and earning Rs.17,000.00 per month. Indisputably, the insurance Company did not adduce any evidence to rebut testimony of the witnesses examined by the claimants. In the light of materials on record, no fault can be found in findings of the Tribunal assessing income of the deceased by considering him to be a skilled worker.

The Tribunal has extended benefit of increase in income qua future prospects to the extent of 50%. The deceased was 30 years old and left behind a young widow aged 25 years and a minor child aged 1 ½ years besides his mother Bhagwanti Devi aged 50 years and father Phoola Ram aged 51 years. There is nothing on record suggestive of the fact that the deceased was suffering from any ailment affecting his capacity to work and earn livelihood for himself and his family. He would not have stagnated at income of Rs.9,000.00 per month, had he remained alive. Under the circumstances, the mere fact that a reference is pending before a larger Bench of Hon'ble the Supreme Court of India is not sufficient to deny benefit of future prospects till the judgment ***Rajesh and others v. Rajbir Singh and others, 2013 (3) R.C.R. (Civil) 170*** is varied or set aside.

The Tribunal has assessed loss of dependency by deducting 1/4th for personal and living expenses of the deceased. The application for compensation was filed by the widow, minor child and parents aged 50-51 years. The father of the deceased did not appear in the witness box to say something with regard to his dependency on the deceased. The widow of the deceased appeared in the witness box but she has not specifically brought forth any material on record to show that father of the deceased was also dependent on his earning. Under the circumstances, admissible deduction would be 1/3rd in place of 1/4th. In this view of the matter, loss of dependency comes to **Rs.18,36,000.00** (13,500 x 12 x 17-1/3rd deduction).

Under conventional heads, the Tribunal has awarded Rs.1,00,000.00 for loss of consortium to widow, Rs.25,000.00 on account of transportation and funeral expenses and Rs.1,00,000.00 for loss of love and affection. It is not specifically mentioned by the Tribunal as to whom Rs.1,00,000.00 for loss of love and affection is payable. The deceased left behind a minor daughter aged 1½ years who would be deprived of love, affection, care and guidance of her father. The deceased has also left behind his mother aged 50 years. As such, an amount of Rs.1,00,000.00 for loss of love and affection awarded by the Tribunal would be appropriated towards love and affection to the child and another sum of Rs.50,000.00 for loss of love and affection to mother, is awarded. The claimants shall be entitled to Rs.25,000.00 for loss of estate. The total compensation comes to **Rs.21,36,000.00**, tabulated as follows:-

Loss of dependency	18,36,000.00
Loss of consortium to widow	1,00,000.00
Transportation and funeral expenses	25,000.00
Loss of love and affection to child	1,00,000.00
Loss of love and affection to mother	50,000.00
Loss of estate	25,000.00

Thus, the compensation is reduced by Rs.1,54,500.00 (22,90,500-21,36,000). In case the insurance company has already paid entire compensation to the claimants, it shall recover the excess amount from the claimants by filing an application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

12.09.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No