IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6282 of 2017 (O&M)
Date of Decision: 21.09.2017

National Insurance Company Ltd. ....Petitioner

Vs.

Lakhwinder Kaur and others ....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sanjeev K.Arora, Advocate, for the petitioners.

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CM No.20196-CII of 2017

For the reasons stated in the application, delay of 53 days in filing the appeal is condoned.

Application stands disposed of.

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The appellant-Insurance Company has come up in appeal against the Award of the learned Tribunal dated 26.04.2017, whereby claim petition filed under Section 163-A of the Motor Vehicles Act has been allowed and a compensation of Rs.5,41,600/- has been awarded.

The Insurance Company has challenged the Award mainly on the two grounds firstly that the age of the deceased has been taken wrongly as 25-26 years. Lakhwinder Kaur wife of the deceased while appearing as CW-1 stated that she was married to the deceased Malkiat Singh 2002, when he was 24 years old. As per her cross-examination, the deceased was more than 35 years of age on 22.08.2013, the alleged date of incident. So, multiplier of 16 should have been taken and secondly that learned Tribunal while computing the compensation has deducted ¼th personal expenses from the assessed income of the deceased Malkiat Singh, whereas in case of claim filed under Section 163-A of MV Act, 1/3rd personal expenses are to be deducted as per the second schedule of the Motor Vehicles Act. So, the learned trial had failed to appreciate the prevailing law on the aforesaid subject.

A perusal of the award of the learned Tribunal shows that learned Tribunal has held that the deceased was 26 years old at the time of incident as per postmortem report. So, this finding of fact does not require to be interfered.

The other ground for challenging the Award, there is no cut of 1/4th on the income of the deceased towards personal expenses. As per second schedule of the Motor Vehicle Act, 1988, the cut should be 1/3rd keeping in view that the deceased was daily wager and running the bicycle shop and his income was taken as Rs.3300 per month and the claim petition was filed under Section 163 A. As per minimum wages in Punjab in 2013, the daily wages was Rs.6247/-. Keeping in view that the claim petition was filed under Section 163 A, Rs.3300/- has been taken and only 1/4th deduction has been made by the learned Tribunal towards personal expenses. This finding cannot also be interfered with in view of the judgment of Hon'ble the Supreme Court in the case of New India Assurance Company Ltd. Vs. Gopali and others, wherein, it was held that a poor person having income below Rs.5,000/-, Rule of 1/3rd deduction towards personal expenses shall not be applied and only 1/10th deduction be made.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present FAO is dismissed.

(RITU BAHRI)
JUDGE

21.09.2017
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No