IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 24.09.2018

FAO No.164 of 2002 (O&M)

The Oriental Insurance Co. Ltd. ... Appellant

Versus

Navin Kumar and others ... Respondents

FAO No.1653 of 2002 (O&M)

Navin Kumar and others ... Appellants

Versus

Sukhdev Singh and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Navin Kapur, Advocate for the insurance company.

Mr. Sudhir Paruthi, Advocate for the claimants.

None for respondent-driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.164 and 1653 of 2002 as these have emerged out of the same award dated 21.09.2001 passed by the Motor Accidents Claims Tribunal, Jalandhar whereby compensation has been assessed on account of death of Krishan Lal in a motor vehicular accident that took place on 30.08.1995.

FAO No.164 of 2002 has been filed by the Oriental Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

FAO No.164 of 2002

The sole submission made by counsel for the appellant-insurance company is that the Tribunal while deciding issue No.3 has held that the insurance company is liable to make payment of compensation to third party but later it can recover the same from owner but nothing has been held in the concluding para of the award with regard to entitlement of the insurance company to recover compensation from the insured by filing an application before the Tribunal. It is submitted that the award passed by the Tribunal may be modified by giving liberty to file an application before the Tribunal for recovery of amount of compensation from the insured after payment thereof to the claimants.

There is no representation on behalf of respondent No.4, earlier being represented by a counsel.

Perusal of findings recorded by the Tribunal on issue No.3 makes it evident that the Tribunal appointed Sh. J.L. Nagar, Advocate as Local Commissioner to visit the office of Licensing Authority, Raipur, Chattisgarh and he recorded statement of Rajesh Kumar Bhargav, LDC in the office of RTO, Raipur, Chattishgarh whereby he deposed that licence No.S-90/15/R-82-83 of Sukhdev Singh was not issued by Licensing Authority, Raipur, therefore, original licence in the name of Sukhdev Singh was fake. As the original licence was fake, renewal thereof would not cure the defect. That being so, insurance company has rightly been given right of recovery against the insured after payment of compensation to the claimants. The insurance company shall be entitle to recover the amount of compensation from the insured after payment to the claimants by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

FAO No.1653 of 2002

Claimants are in appeal seeking enhancement of compensation assessed by the Tribunal to the tune of Rs.6,77,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.10,000/-
2. Multiplier	8
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.6,72,000/-
5. Expenses on funeral	Rs.5000/-

Counsel for the appellants would argue that the deceased was running the business of transport and finance. He filed the income tax return for the assessment year 1995-96 wherein returned income is to the tune of Rs.12 lakh. The return filed by the deceased was scrutinized by the income tax authority and assessment order passed by the Assistant Commissioner of Income Tax, Central Circle-I, Jalandhar is Ex.PX. As per the assessment order, taxable income of the deceased has been computed to the tune of Rs.12,24,000/- per annum and accordingly, the deceased was directed to pay income tax and interest etc. It is argued with vehemence that in view of assessment order Ex.PX, income of the deceased is liable to be assessed at least @ Rs.12 lakh per annum. Claimants may be allowed benefit of addition in income for future prospects and adequate compensation under conventional heads.

Perusal of assessment order Ex.PX would reveal that Krishan Lal (since deceased) filed income tax return declaring income of Rs.12 lakh which included business income from plying of trucks amounting to Rs.2 lakh. The Assessing Officer, on the last page of assessment order has held that perusal of assessee's bank passbook shows that there are unexplained cash credit also. Income from plying of trucks is presumed @ Rs.2000/- per month for the entire year in respect of nine trucks and for two months remaining two trucks and accordingly, his income from the transport business was assessed to the tune of Rs.2,24,000/- per annum.

The application for compensation has been filed by two adult sons and widow of the deceased. The trucks owned by the deceased would be available for the family to carry on transport business or to get sale proceeds thereof. There is nothing on record suggestive of the fact that on account of death of Krishan Lal, the family had closed the transport business run by him. In the given scenario, the Tribunal has rightly held that claimants shall be entitle to loss of dependency by assessing loss of managing capacity of the deceased assessed @ Rs.10,000/- per month. I do not find any reason to interfere in assessment of income by the Tribunal.

The deceased was 52 years old, therefore, claimants shall be entitle to addition in income for future prospects @ 10%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. The deceased was born on 03.01.1943 recorded in his income tax return Ex.PW3/1. Accordingly, appropriate multiplier for computing loss of dependency is 11. In this manner, loss of dependency is calculated at Rs.9,68,000/- [(Rs.10,000 x 12 x 11) + (10% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.10,38,000/- and the additional amount is Rs.3,61,000/- (10,38,000 - 6,77,000), payable with interest @ 7.5% per annum from the date of petition till realization, to widow of the deceased. The respondents before the Tribunal would be jointly and severally liable to pay compensation to the claimants but the insurance company would have right of recovery against the insured, in terms of order of even date passed in FAO No.164 of 2002.

The appeal is partly allowed in the aforesaid terms.

24.09.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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