In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:6.3.2018

FAO-1358 of 2012

Asha Rani and others

---Appellants

vs.

Gautam and others

---Respondents

FAO-2699 of 2013 and Cross Objections No. 96-CII of 2013

Oriental Insurance Company Limited

---Appellant

vs.

Smt. Kiran Mahajan and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.Rajiv Dev Sharma, Advocate
for the appellants in FAO No. 1358 of 2012
for respondents No. 2 and 3 in FAO No. 2699 of 2013

Mr. J.S.Chatrath, Advocate
for Mr. Ashwani Talwar, Advocate
for the appellant-insurance company
for respondent No. 3 in FAO-1358 of 2012

Mr. B.K.Mehta, Advocate
for the cross objector-respondent No. 1, 1(a) and 1(b)
in FAO- 2699 of 2013

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1358 of 2012, 2699 of 2013 and

Cross Objections No. 96-CII of 2013 as these have emerged out of the same accident that took place on 14.9.2009.

FAO No. 1358 of 2012

Asha Rani and others, claimants have filed the appeal seeking enhancement of compensation on account of death of Sh. Surinder Pal Kajal.

The Motor Accidents Claims Tribunal, Gurdaspur (in short "the Tribunal") has assessed compensation of Rs. 63,67,800/-, detailed hereunder:-

Monthly income of the deceased	Rs. 67,818/-
Deduction of income tax	30%
Addition in income for future prospects	30%
Deduction for personal expenses	1/3rd
Multiplier	12
Loss of dependency	Rs. 63,47,796/-
Loss of estate	Rs. 5000/-
Funeral expenses	Rs. 5000/-
Loss of consortium	Rs. 10,000/-

Counsel for the appellants would urge that the Tribunal has seriously erred by deducting 30% out of gross salary and thereby computing loss of dependency at Rs. 47,473/- per month. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment made by the Tribunal.

The Tribunal has rightly considered gross salary of the deceased at Rs. 67,818/- per month drawn by him while working as

Executive Engineer at RSD Project Shahpurkandi. However, the Tribunal has committed an error by deducting income tax @ 30%. Taking into consideration liability to pay income tax of Rs. 1,48,145/- at the relevant time, annual income for computing loss of dependency comes to Rs.6,65,671/-(8,13,816- 1,48,145). The addition in income for future prospects @ 30%, deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 6,65,671 x12=79,88,052 + 23,96,416 (30%)= 1,03,84,468 – 34,61,489 = Rs. 69,22,979/-

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270,** detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to **Rs.69,92,979/-** and the additional amount is **Rs.6,25,179/-** (69,92,979-63,67,800).

Counsel for the claimants has submitted that the Tribunal has allowed interest at the rate of 6% per annum only in case the insurance company fails to pay the amount within two months. The Tribunal has not assigned any reason to give a concession in favour of the insurance company and denying payment of interest to the claimants who are otherwise entitled to pendente lite interest on the amount of compensation assessed by the Tribunal. As such, claimants shall be entitled to interest @

6% per annum on the compensation assessed by the Tribunal from the date of petition till realization. On the additional amount allowed by this Court, claimants are entitled to interest @ 7.5% from the date of petition till realization. The additional amount shall be shared by the claimants in terms of the award passed by the Tribunal.

FAO No. 2699 of 2013 and Cross Objections No. 96-CII of 2013

FAO No. 2699 of 2013 has been filed by the Oriental Insurance Company Limited (hereinafter to be referred to as "the insurance company") whereas cross objections have been preferred by claimant-respondent No. 1 seeking enhancement of compensation.

Counsel for the insurance company would fairly inform that appeal has been preferred to challenge quantum of compensation assessed by the Tribunal.

The Tribunal has awarded compensation of Rs.67,41,864/-, detailed hereunder:-

Monthly income of the deceased	Rs. 93,637/-
Deduction for personal expenses	1/3rd
Multiplier	9
Loss of dependency	Rs. 67,41,864/-

Counsel for the insurance company would argue that as annual income of the deceased was Rs.11,23,644/-, income tax is liable to be deducted. Widow of the deceased is working with Punjab National Bank at salary of Rs. 40,000/- per month, therefore, cannot be held as dependent upon income of the deceased. The widow is getting family pension of Rs. 31,055/- per month and the same is liable to be deducted out of compensation assessed under the Motor Vehicles Act, 1988.

Counsel representing the claimants, on the other hand, would apprise the court that though application for compensation has been filed by widow of the deceased but this Court suo moto,vide order dated 18.7.2014 impleaded sons of the deceased namely Aseem Mahajan and Aditya Mahajan as necessary party for determining just compensation payable qua death of Sh. Krishan Mohan Mahajan. It is further argued that the claimants are entitled to increase in income for future prospects @ 15% as the deceased was 57 years old and a regular government employee working as Senior Medical Officer. Adequate compensation may be allowed under conventional heads.

The Tribunal has not deducted income tax, a statutory liability of the deceased. Taking into consideration liability to pay income tax of Rs. 2,41,093/-, annual loss of dependency comes to Rs. 8,82,551/-. Counsel for the insurance company has not disputed deduction for personal expenses and multiplier adopted for computing loss of dependency. He has also not raised an issue that the deceased was 57 years old and a regular government employee. Under the circumstances, claimants shall be entitled to increase in income for future prospects @ 15% in the light of latest judgment of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)**.

Counsel for the insurance company has raised an issue with regard to widow of the deceased being an employee of Punjab National Bank at salary of Rs. 40,000/- per month and family pension of Rs. 31,055/-. So far as plea with regard to deducting family pension, the same is highly misconceived and liable to be rejected. It has been decided in catena of judgments by Hon'ble the Supreme Court that pensionary benefits available to family of the deceased employee in active service are not amenable to deduction for computing loss of dependency. The mere fact that widow of the deceased was an employee of Punjab National Bank is not sufficient to deny her benefit of loss of dependency. This apart, this court has also impleaded sons of the deceased as a party vide order dated 18.7.2014. Sons of the deceased were 22 years 06 months and 16 years 10 months old at the relevant time. They would certainly be entitled to compensation even if the elder son might have been working after acquiring qualification of MBBS/PGDM. In the given circumstances, it is difficult to accept contention of the insurance company that claimants are not entitled to get compensation in terms of the award passed by the Tribunal plus addition in income for future prospects, after deducting statutory liability to pay income tax on the basis of salary of the deceased at the relevant time. In view of the above, loss of dependency comes to Rs. 8,82,551 x 9 = 79,42,959 + 11,91,444 (15%)=91,34,403 - 30,44,801(1/3rd)= Rs.60,89,602/-

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra),** detailed hereunder:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation is Rs.61,59,602/-. Compensation awarded by the Tribunal is reduced to the extent of **Rs. 5,82,262/-** (67,41,864- 61,59,602).

The appeal and cross objections are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

6.3.2018
paramjit

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