IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

209 **Date of decision : 11.12.2018**

FAO-2917-2013 (O&M)

NATIONAL INSURANCE COMPANY LTD ... Appellant

VS.

LAKHPATI AND ORS ... Respondents

FAO-6221-2016 (O&M)

LAKHPATI AND ORS ... Appellants

VS.

MUBARIK AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. Aseem Aggarwal, Advocate
for the insurance company.

Mr. Namit Sharma, Advocate
for the claimants.

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REKHA MITTAL J (Oral).

This order will dispose of FAO No.2917 of 2013 and 6221 of 2016 as these have emerged out of the same award dated 01.03.2013 passed by the Motor Accidents Claims Tribunal, Panipat whereby compensation has been assessed on account of death of Birham Singh in a motor vehicular accident that took place on 04.07.2011.

FAO No.2917 of 2013 has been filed by the National Insurance Company Ltd. whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred only to challenge quantum of compensation.

The Tribunal has awarded compensation of Rs.4,70,200/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.3300/-
2. Addition in income for future prospects	30%
3. Multiplier	13
4. Deduction for personal expenses	1/3rd
5. Loss of dependency	Rs.4,47,200/-
6. Loss of consortium, estate and cost of funeral	Rs.23,000/-

Counsel for the insurance company would argue that as the application for compensation has been filed by invoking Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act'), claimants have wrongly been allowed benefit of addition in income for future prospects and a sum of Rs.23,000/- under conventional heads.

Counsel representing the claimants, on the contrary, would urge that income of the deceased is liable to be assessed at Rs.40,000/- per annum even if the claim is allowed under Section 163-A of the Act.

Another submission made by counsel is that in view of judgment of Constitution Bench **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270,** all the benefits available under Section 166 of the Act can be allowed under Section 163-A of the Act.

The claimants, in application for compensation, have alleged in column No.6 that income of the deceased is Rs.3300/- per month and the Tribunal has accepted this plea and assessed income at Rs.3300/- per month. As such, findings of the Tribunal in this regard are liable to be affirmed. The contention of the claimants by relying upon judgment in **Pranay Sethi and others's case (supra)** is patently misconceived, thus, untenable. The Tribunal has wrongly allowed addition in income for future prospects @ 30% because in a claim under Section 163-A of the Act, compensation is to be assessed on the basis of structured formula provided in the Second Schedule appended thereto. However, deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.3,43,200/- [(3300 x 12 x 13) + (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.9500/-, detailed hereunder:-

1. Loss of consortium to widow	Rs.5000/-
2. Funeral expenses	Rs.2000/-
3. Loss to estate	Rs.2500/-

Total compensation is Rs.3,52,700/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,17,500/- (4,70,200 - 3,52,700). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, the appeal filed by the claimants fails and is accordingly dismissed. As the appeal (FAO No.6221 of 2016) has been decided on merits, application for condonation of delay is of academic relevance only.

(REKHA MITTAL)
JUDGE

11.12.2018
ashok

Whether speaking/reasoned ? Yes/No
Whether Reportable ? Yes/No