IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1327 of 2015 (O&M) and
XOBJC-238-CII of 2015
Date of Decision: 28.11.2018.

United India Insurance Company Ltd.

...Appellant

Versus

Radhey Lal and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Paul S. Saini, Advocate for the appellant.

Mr. Sandeep Kotla, Advocate for respondent No.1 and 2 /Cross-Objectors.

Ms. Vaishali Singla, Advocate for
Mr. Ashok Singla, Advocate for respondent Nos.3 and 4.

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B.S.WALIA, J (Oral).

1. This order shall dispose of FAO No.1327 of 2015, filed by the appellant/Insurance Company for reduction of compensation as also cross-objections No.238-CII of 2015 filed by respondent Nos.1 and 2/ claimants/cross-objectors for enhancement of compensation.

2. Appeal has been filed by the appellant/Insurance Company against award of compensation of ₹10,42,000/- by the learned Motor Accidents Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal') to respondent Nos.1 and 2/claimants/cross-objectors on account of death of Jai Chand i.e. son of respondent No.1 and brother of respondent No.2, in a motor vehicular accident on 13.03.2013.

3. Learned counsel for the appellant contended that future prospects awarded @ 50% of the established income of the deceased has been wrongly computed by the Tribunal in view of the decision of Hon'ble the Supreme Court in National Insurance Company Limited vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009; secondly that a sum of ₹60,000/- awarded to respondent Nos.1 and 2/claimants/cross-objectors on account of love and affection is also not maintainable as there is no such head in the decision given by Hon'ble the Supreme Court in Pranay Sethi's case (supra). Learned counsel further contended that the issue with regard to the age and multiplier is not being pressed by him.

4. Per contra, learned counsel for respondent Nos.1 and 2/ claimants/ cross-objectors contended that the cross-objectors/claimants are entitled to enhancement of compensation on account of funeral expenses to ₹15,000/- as against ₹10,000/- awarded by the Tribunal, likewise respondent Nos.1 and 2/cross-objectors are entitled to award of compensation of ₹15,000/- on account of loss of estate while respondent No.1/father of deceased unmarried son Jai Chand, is also entitled to loss of filial consortium @ ₹40,000/-.

5. I have considered the submission of learned counsel for the parties.

6. Admittedly, the deceased was 18 years of age and his income was assessed as unskilled labourer at ₹6,000/- per month. In view of paragraph No.61(iv) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra), where the deceased was self employed and

below 40 years of age, 40% of the established income minus the tax component is to be taken into account for computing the future prospects.

7. Since, in the instant case, the deceased was self employed, was below 40 years of age, therefore, appellants are held entitled to addition of 40% of the established income of the deceased less tax component on account of future prospectus instead of 50% added by the Tribunal.

8. As regards appropriate claim under conventional head, as per paragraph No.61 (viii) of the decision in Pranay Sethi's case (supra), compensation of ₹40,000/- is liable to be awarded on account of loss of consortium and ₹15,000/- on account of funeral expenses and like amount for loss of estate. As regards the claim for award of loss consortium, Hon'ble the Supreme Court in a subsequent decision in Magma General Insurance Co. Ltd vs, Nanu Ram Alias Chuhru Ram, in Civil Appeal No.9581 of 2018, decided on 18 September, 2018, has held that "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

9. Accordingly, respondent Nos.1 and 2/claimants/cross-objectors are held entitled to award of compensation of ₹15,000/- on account of funeral expenses as against ₹10,000/- awarded by the tribunal and ₹15,000/- on account of loss of estate. Likewise, respondent No.1/father of deceased-unmarried son is held entitled to award of ₹40,000/- on account of loss of filial consortium. Since there is no head for award of compensation on account of loss of love and affection, therefore, award of ₹60,000/- made by the Tribunal under the said head is not maintainable.

10. In the circumstances, the compensation payable to respondent Nos.1 and 2/claimants/cross-objectors works out as under:

Sr. No.	Head	Amount assessed by the Tribunal	Amount assessed by this Court
1	Income	₹6000/-	₹6000/-
2	Future Prospects	50%	40%
3	Total Income assessed	₹6000+₹3000/- = ₹9000/-	₹2400+ ₹6000/- = ₹8400/-
4	Multiplier applied	18	18
5	Deduction (towards personal expenses of the deceased)	50% ₹9000-₹4500=₹4500/-	50% ₹8400-₹4200=₹4200/-
6	Annual dependency	₹4500x12x18=₹9,72,000/-	₹4200x12x18=₹9,07,200/-
7.	Funeral expenses	₹10,000/-	₹15,000/-
8.	Loss of Estate	Nil	₹15,000/-
9.	Love and affection	₹60,000/-	Nil.
10.	Loss of consortium	Nil	₹40,000/- on account of filial consortium to respondent No.1, father of deceased unmarried son.
11.	Total	₹10,42,000/-	₹9,77,200/-

11. Accordingly, as against the compensation of ₹10,42,000/- awarded by the Tribunal, respondent Nos.1 and 2/claimants/cross-objectors are held entitled to award of compensation of ₹9,77,200/- along with interest @ 7.5 per annum w.e.f. the date of filing of the claim petition till date of payment, less amount, if any, already paid.

12. Needless to mention, respondent Nos.1 and 2/claimants/ cross-objectors would be entitled to the award of compensation in proportion to their shares determined by the Tribunal after first making payment of ₹40,000/- towards loss of filial consortium to the father of unmarried deceased son Jai Chand i.e. respondent No.1. The Insurance Company shall

make the payment to the appellants after making deduction of the tax liability towards future prospects, in accordance with the decision of Hon'ble the Supreme Court in Pranay Sethi's case (supra).

13. Accordingly, appeal/cross-objections are allowed and award dated 04.12.2014, is modified to the extent as noted above.

(B.S.WALIA)
JUDGE

28.11.2018
rajesh.k.khurana

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