222 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 184 of 2015(O &M)
Date of decision :03.10.2018

Future Generali India Insurance Co.Ltd. .... Appellant

versus

Smt.Rakesh and others .... Respondents

CORAM : HON'BLE MRS. JUSTICE REKHA MITTAL

***

Present: Mr.Vishal Aggarwal, Advocate for the appellant.

Mr.Sunny Namdev, Advocate
for Mr.Vikas P.Singh, Advocate for respondents No. 1 to 3.

Mr.Sumit Sangwan, Advocate for respondent No.4.

***

<u>REKHA MITTAL , J. (ORAL)</u>

The present appeal has been preferred by the insurance company against award dated 28.11.2014 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Dharambir in a motor vehicular accident that took place on 15.03.2014.

Counsel for the insurance company has assailed the award primarily on two counts. It is argued that compensation assessed by the Tribunal allowing benefit of increase in income for future prospects at the rate of 50% is liable to be reduced to 40%. Further argued that as the offending vehicle i.e. Tractor bearing No. HR-18A-9843 was insured for agricultural purpose but the bricks were loaded in the trolley attached with the tractor at the time of accident, the same was used for commercial purpose as has been so admitted by Rajesh-PW2, therefore, the insured is guilty of violating the terms and conditions of insurance policy entitling the insurance company to press for right of recovery against the insured after satisfying the award towards claimants.

Counsel representing the claimants, on the contrary, has refuted contention of counsel for the insurance company that compensation assessed by the Tribunal needs reduction. It is argued that the deceased was driver by profession and he sustained injuries when he was driving pick up dala bearing No. HR-61A-0246 on his return journey after dropping buffalo at Lutana Ludi(Rajasathan). Claimants may be allowed adequate compensation under conventional heads.

Counsel representing respondent No.4 has supported findings of the Tribunal on issue No.3 with the submission that the insurance company has rightly been held to be jointly and severally liable to pay compensation to the claimants.

So far as plea of the insurance company that the insured is guilty of violating the terms and conditions of policy as the vehicle was used for commercial purpose as against purpose for which the policy was issued, the same is misconceived and liable to be rejected. Counsel for the appellant, on the asking of the Court, has gone through the written statement filed by the insurance company but is unable to point out if the insurance company had raised any such plea that the vehicle was used for commercial purpose and the insured has contravened the terms and conditions of policy. In the given circumstances, the insured has been deprived of an opportunity to counter/rebut any such contention of the insurance company sought to be raised at the time of final arguments. That being so, the insurance company cannot derive any advantage to its contention from testimony of Rajesh-PW2 that the trolley was loaded with bricks and was used for commercial purpose.

This brings the Court to assessment of compensation by the Tribunal. The Tribunal has assessed compensation of Rs.11,33,000/- detailed hereunder:-

1.	Monthly income	Rs. 5600/-
2.	Addition in income for future prospects	50%
3.	Deduction for personal expenses	1/3rd
4.	Multiplier	15
5.	Loss of dependency	Rs. 10,08,000/-
6.	Loss of consortium	Rs.1,00,000/-
7.	Loss of estate and funeral expenses	Rs. 25,000/-

Contention raised by counsel for the insurance company that addition in income for future prospects should be 40% is tenable when examined in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited v. Pranay Sethi and others 2017 SCC 1270** .

The Tribunal has an obligation to assess just and reasonable compensation in order to make good the loss as the money can do. The Tribunal in para 18 of the award has held that deceased was holding a driving licence-Ex.P2. Indisputably, the deceased sustained injuries when he was driving pick up dala bearing No. HR-61A-0246. Taking a clue from the notification issued by the State of Haryana fixing minimum wages for various categories of workers at the relevant time, income of the deceased is assessed at Rs. 6000/- per month.

Deduction for personal expenses allowed by the Tribunal is correct and affirmed. The Tribunal has applied multiplier of 15 for computing loss of dependency. As per date of birth of deceased mentioned in the driving licence, he was born on 11.11.1977, therefore, he was more than 36 years of age at the time of death. Accordingly multiplier of 15 applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,08,000/-[(Rs. 6000 x 12 x 15) + (40% future prospects)-(1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to Rs. 1,10,000/- detailed hereunder:-

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

Total compensation is Rs. 11,18,000/-. Compensation assessed by the Tribunal is slightly more than what has been found payable to the claimants by this Court. That being so, the award passed by the Tribunal is affirmed.

For the foregoing reasons, the appeal stands disposed of.

(REKHA MITTAL)
JUDGE

03.10.2018
sunita

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