IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

XOBJC-266-CII-2015 in/and
FAO-2032-2015 (O&M)

Date of decision: 15.05.2018

The New India Assurance Co. Ltd.

..... Appellant

Versus

Smt. Pooja and others

..... Cross/objectors-Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. RK Bashamboo, Advocate for the appellant.

Mr. RK Saini, Advocate
for cross-objectors/respondents No. 1 to 5.

RAMENDRA JAIN, J. (ORAL)

1. Through this appeal appellant-Insurance Company has sought reduction in the compensation amount awarded to cross-objector/respondent-claimants No. 1 to 5, vide impugned Award dated 30.10.2014 of the Motor Accident Claims Tribunal, Kurukshetra (for short-'the Tribunal'), in view of judgment of Hon'ble the Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009,*** whereas claimants have filed cross-objections for enhancement of the same.

2. Furnishing calculations Mark-A, learned counsel for the appellant-Insurance Company, contends that according to ***Pranay Sethi's case (supra),*** the amount of compensation has to be reduced from ₹17,52,348/- to ₹14,95,501/-, by taking the income of the deceased at ₹5341/- per month on the basis of minimum wages prescribed by the

Government for the relevant period. The learned Tribunal has wrongly taken the income of deceased at ₹ 6665/-, without any proof or basis.

3. On the other hand, learned counsel for cross-objector/respondent-claimants No. 1 to 5, vehemently refuting the above submissions of learned counsel for the appellant-Insurance Company, contends that the learned Tribunal has erred in not taking the monthly income of the deceased at ₹ 80,000/- per month, despite having documentary evidence on the record that the deceased was an experienced driver having valid driving licence Ex. P-1 valid up to 12.03.2017 , for driving heavy vehicles at Oman.

4. Having given considerable thought to the rival submissions made by learned counsel for both the sides, this Court is of the considered view that the compensation awarded by the learned Tribunal vide impugned Award, neither liable to be enhanced nor to be reduced for the reasons to follow:

5. The cross-objector/respondent-claimants No. 1 to 5 have produced bank statement Ex. PW-3/A of Vikram Singh, father of deceased-Ajay Kumar, showing that employer of his deceased son at Oman, M/s Purshottam Kanji EXC, had transferred ₹21,910/- approximately, in the last six months preceding the arrival of deceased to India in February, 2013. The accident took place on 16.07.2013. Therefore, since last six months prior to the incident, the deceased was staying in India. No proof of income of the deceased in India was produced by cross-objector/respondent-claimants No. 1 to 5, before the learned Tribunal.

6. There is also no evidence on the record that deceased had to rejoin his employer at Oman. Since, there is no income proof on the record

regarding income of the deceased six months prior to the date of his death, the money transferred by the alleged employer of the deceased to the account of his father Ex. PW-3/A, cannot be taken into consideration, in view of the fact that in foreign countries, wages in Dollar are manifold more as compared to India.

7. That apart, there is no evidence on the record that as to whether the deceased was removed from his employment or was still in employment at Oman. After his arrival to India, the deceased did not return to Oman to re-join his employment and was staying here for long. Therefore, inference can be drawn that he was no more in employment abroad and for that reason, the deceased did not return to Oman.

8. According to learned counsel for the appellant-Insurance Company, the learned Tribunal ought to have taken minimum wages at ₹ 5341/- per month prevalent at that time, prescribed by the Government, instead of Collector's rate which was ₹ 6655/- per month while calculating the compensation.

9. This Court is not in agreement with the above submission of learned counsel for the appellant-Insurance Company, in view of the fact that the deceased was having driving licence Ex. P-1, issued by the Sultanate of Oman, Royal Oman Police Directorate of Traffic, valid up to 12.03.2017, which may be valid in India also, after completion of certain formalities under international treaties. Therefore, the learned Tribunal ought to have taken income of the deceased much more than that of a casual labourer, considering him as a experienced driver of heavy vehicles.

10. Though, according to ***Pranay Sethi's case (supra),*** 40% had to be added towards future prospects, but the learned Tribunal has added 50%.

Therefore, if the same is reduced to 40%, then the compensation comes to ₹ 14,95,501/-, but the same is not reduced, in view of discussion made above that income of the deceased would have taken much more than that of a casual labourer.

11. Considering this aspect of the matter, the findings of the learned Tribunal. awarding the aforesaid amount of compensation to cross-objector/respondent-claimants No. 1 to 5 are not interfered with.

12. In view of the above discussion, the instant appeal as well as cross-objections are dismissed.

May 15, 2018 **(RAMENDRA JAIN)**
rishu **JUDGE**

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