IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 **FAO-3942-2014 (O&M)**
Date of Decision : 18.8.2018

National Insurance Company Ltd. **....Appellant**

vs.

Smt.Usha Devi and others **....Respondents**

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Ms. Swatantar Kapoor, Advocate
for the appellant(s).

Mr. Sanjay Jain, Advocate
for respondent No. 1 and 2.

None for respondent No.3.

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AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 7.3.2014 passed under Motor Accident Claims Tribunal, S.A.S.Nagar (Mohali) awarding compensation of Rs. 23,20,000/- alongwith interest at the rate of 6% per annum on account of death of Nitesh Kumar in an accident.

Since limited points have been urged detailed reference to the facts is not required.

Counsel for the appellant-insurance company has argued that the deceased was an engineering student. The Tribunal took a cue from the judgments of the Supreme Court in ***Arvind Kumar Mishra vs. New India Assurance Co. Ltd. and another 2011 (1) PLR 740 (SC)*** but completely misapplied the same. In that judgment future income of an engineering student was taken to be Rs. 5,000/- per month but in the present case the Tribunal has taken it as Rs. 15,000/- per month. Counsel for the claimants has pointed out that that was a case where accident has taken place in the year 1993 whereas in the present case the accident has taken place in the year 2010. In my considered opinion, even after allowing for the difference in time, the income could not be taken to be three times what in 2010 as what it was in 1993. I consequently, reduce the same and take notional income as Rs. 7,500/- per month.

Learned counsel for the respondents has stated that under the conventional heads Rs. 25,000/- has been granted and cited the judgment of the Supreme Court passed in the matter of ***Sureshchandra BagmalDoshi and Anr. vs. New India Assurance Company Limited and others*** reported as ***2018 (2) RCR (Civil) 841*** where the widow daughter had died and the Supreme Court held as follows :-

> "*14. Now coming to the last aspect, i.e., the conventional heads, in National Insurance Company Limited(supra), it has been standardized at Rs.15,000 for loss of estate; Rs.40,000 towards loss of consortium (in the present case loss of love and affection) and Rs.15,000 towards funeral expenses. The total amount, thus, would be Rs.70,000, which as per the said judgment is capable of being enhanced @ 10 per cent in the span of every three years. However, we are still within the window of three years.*"

Having gone through the judgment, I find that their Lordships has considered the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009.*** Consequently, I grant a sum of Rs.45,000/- more under the conventional heads.

Counsel for the appellant has pointed out that on notional income future prospects could not have been granted. Counsel for the claimant has rebutted this argument by saying that if future prospects cannot be granted on notional income similarly deduction also cannot be made. I find merit in both the arguments.

In the circumstances, the appeal is allowed to the extent that the income of the deceased is taken to be Rs. 90,000/- per year. There would be no future prospects and no deduction but under the conventional heads an amount of Rs. 45,000/- is increased.

Counsel for the claimants has further pointed out that interest rate at 6% is too low. I find it to be correct and enhanced the interest rate from 6% to 7.5% from the date of filing of the claim petition till the date of realization.

The apportionment and management would be same as ordered by the Tribunal.

The appeal stands disposed of with the abovesaid modifications.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

18.8.2018
anuradha

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No