IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.08.2018

FAO-1341-2016 (O&M)

National Insurance Company Ltd. ... Appellant

Versus

Birender and others ... Respondents

FAO-4023-2016 (O&M)

Birender and another ... Appellants

Versus

Khushi Ram and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. S.S. Sidhu, Advocate
for the insurance company.

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants in FAO No.4023 of 2016 and
for respondents No.1 and 2 in FAO No.1341 of 2016.

Mr. Narayan Prasad Gupta, Advocate
for owner and driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1341 and 4023 of 2016 as these have emerged out of the same award dated 04.12.2015 passed by the Motor Accidents Claims Tribunal, Jind whereby compensation has been allowed on account of death of Sunheri Devi in a motor vehicular accident that took place on 20.10.2014.

The Tribunal has awarded compensation of Rs.17,40,532, detailed hereunder:-

1. Monthly loss of dependency	Rs.10,997/-
2. Multiplier	13
3. Loss of dependency	Rs.17,15,532/-
4. Expenses on funeral	Rs.25,000/-

FAO No.1341 of 2016 has been filed by the National Insurance Company Ltd. (hereinafter to be referred as 'the insurance company') and counsel would inform that the appeal has been preferred only to assail quantum of compensation assessed by the Tribunal. Birender and another have filed the appeal seeking enhancement of compensation.

Counsel for the insurance company would argue that as the claimants are major sons of the deceased, they are not entitled to compensation qua loss of dependency. Another submission made by counsel is that as family of the deceased shall be entitled to financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), amount available under the Rules of 2006 is amenable to deduction out of compensation, if any, found payable. In this context, reference has been made to judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569**.

Counsel for the claimants, on the contrary, would urge that the mere fact that claimants are major sons of the deceased is not sufficient to deny them benefit of benevolent provisions of the Motor Vehicles Act, 1988 (in short 'the Act') which entitle the legal representatives of the deceased to file an application for grant of compensation. It is further argued that deceased was working as Peon in the office of Tehsildar and drawing salary of Rs.23,123/- per month as per salary statement Ex.P1 but the Tribunal has wrongly assessed loss of dependency on carry home salary of the deceased. In addition, it is argued that the deceased was drawing pension of her husband @ Rs.7000/- per month proved by PW4 and the Tribunal has not allowed loss of income in respect of pension received by Sunheri Devi. Adequate compensation may be allowed under conventional heads. The Tribunal has allowed deduction for personal expenses to the extent of 50% but the same should be 1/3rd as two sons of the deceased have been held entitled to loss of dependency.

The deceased was 47 years and approximately 6 months old at that time. She was to retire at the age of 60 years. Income of the deceased was available to her family. There is nothing on record to suggest that claimants were living separate from their mother. This apart, if the claimants are not allowed loss of dependency, they are entitled to substantial amount qua loss to estate. That being so, compensation would be assessed by applying multiplier method.

The salary of the deceased was Rs.23,123/- per month and the same would be taken into account for computing compensation. Claimants shall be entitled to benefit of future prospects @ 30% as the deceased was a regular government employee. The multiplier applied by the Tribunal is correct and affirmed. The claimants are major sons of the deceased. Birender, one of the claimants appeared in the witness box and admitted that both the claimants used to do agriculture work on contract basis and earn Rs.1 to 1.5 lakh per annum. In the given scenario, admissible deduction for personal expenses would be 50%. In this manner, loss of dependency qua loss of income is calculated at Rs.23,44,672/- [(Rs.23,123 x 12 x 13) + (30% future prospects) – (50% deduction for personal expenses)].

The claimants examined a witness from the bank and he proved the bank statement Ex.P2 with regard to payment of pension of Rs.7000/- per month to the deceased. By applying multiplier of 13 and deduction for personal expenses to the tune of 50%, loss of dependency qua loss of pension is calculated at Rs.5,46,000/- [(Rs.7000 x 12 x 13) – (50% deduction for personal expenses)]. Total loss of dependency is Rs.28,90,672/- (23,44,672 + 5,46,000). Claimants shall be entitled to Rs.30,000/- under conventional heads, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. In this manner, total compensation payable to the claimants comes to Rs.29,20,672/-.

Indisputably, the deceased was an employee of State of Haryana. The family of the deceased shall be entitled to benefit of compassionate assistance for a period of 12 years as the deceased was less than 48 years of age at the time of occurrence and her date of retirement on superannuation is 31.03.2027 that is beyond 12 years from the date of death. Total financial assistance available to family of the deceased would be Rs.33,29,712/- (Rs.23123 x 12 x 12). However, 50% of this amount shall be deducted from compensation, in the light of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017**. After deducting Rs.16,64,856/-, total compensation payable to the claimants is Rs.12,55,816/- (29,20,672 – 16,64,856) and compensation awarded by the Tribunal is reduced to the extent of Rs.4,84,716/- (17,40,532 – 12,55,816). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

Disposed of, accordingly.

(REKHA MITTAL)
08.08.2018 **JUDGE**
ashok

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