IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.11.2018

FAO No.4165 of 2014 (O&M)

Smt. Jeeto Devi and others ... Appellants

Versus

Salinder Kumar and others ... Respondents

FAO No.9905 of 2014 (O&M)

L & T General Insurance Co. Ltd. ... Appellant

Versus

Smt. Jeeto Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod K. Kanwal, Advocate
for the claimants.

Mr. Sanjeev Kodan, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4165 and 9905 of 2014 as these have emerged out of the same award dated 04.02.2014 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of death of Ram Kumar in a motor vehicular accident that took place on 18.05.2013.

FAO No.4165 of 2014 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by the insurance company to assail the award.

The Tribunal has awarded compensation of Rs.35,19,100/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.21,000/-
2. Addition in income for future prospects	30%
3. Multiplier	13
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.31,94,100/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Loss of love and affection to widow	Rs.1,00,000/-
9. Loss of love and affection to claimants No.2 to 4	Rs.1,00,000/-

Counsel for the insurance company would urge that income of the deceased assessed by the Tribunal is not based upon correct appreciation of the income tax return available on record. Addition in income for future prospects should be 25% as against 30% allowed by the Tribunal. Compensation allowed under conventional heads needs modification in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has supported findings of the Tribunal assessing income of the deceased at Rs.21,000/- per month on the basis of income tax returns Exs.P1 to P3. For this purpose, reference has been made to judgment of Hon'ble the Supreme

Court **United India Insurance Co. Ltd. Vs. Indiro Devi and ors., 2018(3) RCR (Civil) 455**.

Perusal of the income tax returns would reveal that in the return for the assessment year 2010-11, gross income including income from agriculture was Rs.98,690/- with tax liability nil. In the return for the assessment year 2011-12 Ex.P2, total income is Rs.1,59,900/- i.e. Rs.1,19,370/- from sale and supply work etc. and Rs.40,530/- from other sources. Agricultural income as per tax purpose is shown to be Rs.76,800/-. In the latest return for the assessment year 2012-13, income from sale and supply work etc. is Rs.1,19,760/-, from other source Rs.58,800/- and agriculture income Rs.78,200/-. No evidence has been brought on record, if the deceased owned any land or what was the source of his agriculture income or income from other source. This apart, there is no evidence that agriculture income or income from other source was the result of personal effort or involvement of the deceased. In the given scenario, income of the deceased to the tune of Rs.1,19,760/- from business would be taken into consideration for assessing loss of dependency. Claimants shall be entitle to addition in income for future prospect @ 25%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,59,575/- [(1,19,760 x 13) + (25% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Magma**

General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018, claimants shall be entitle to Rs.1,50,000/-, detailed hereunder:-

1. Loss of consortium to claimants No.1 to 3	Rs.1,20,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.16,09,575/- and compensation allowed by the Tribunal is reduced to the extent of Rs.19,09,525/- (35,19,100 - 16,09,575).

For the foregoing reasons, appeal filed by the claimants is dismissed. However, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

16.11.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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