IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 1672 of 2016
Date of decision:- 09.05.2018

New India Assurance Co. Ltd. ...Appellant

Versus

Ramesh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vinod Gupta, Advocate, for the appellant

Mr. M.S. Punia, Advocate
for respondent No. 1 to 4.

RITU BAHRI J. (Oral)

C.M. No. 6170-CII-2016

For the reasons mentioned in the application, delay of 26 days in in filing of the appeal is hereby condoned.

The application stands disposed of accordingly.

F.A.O No. 1672-2016

The present appeal has been preferred by the Insurance Company-appellant, seeking modification of the award passed by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') to the tune of Rs.16,10,400/-, vide impugned award dated 10.11.2015 in a claim petition filed under Section 166 and 140 of the Motor Vehicles Act (for short 'the Act') on account of death of Kuldeep, who died in road accident on 29.12.2013 when a truck came from Meerut side and hit against the motorcycle of the deceased.

COMPENSATION AWARDED BY THE TRIBUNAL

Sr. No.	***Heads***	***Calculations***
(i)	Gross Income	Rs.6700/- per month
(ii)	50% future prospects	Rs.6700+ Rs.3350=Rs.10050/-
(iii)	1/2 deducted as personal expenses of the deceased=	Rs.10,050-5025=Rs.5025/-
(iv)	Compensation after multiplier of 18 is applied	Rs.5025 x 12 X 18= Rs.10,85,400/-
(v)	Loss of love and affection for father, mother, brother and sister of the deceased	Rs.4,00,000/-
(vi)	Loss of Estate	Rs.1,00,000/-
(vii)	Funeral expenses	Rs.25,000/-
	Total	**Rs.16,10,400/-**

The parties are not in dispute with respect to negligence of the driver of the offending vehicle.

Learned counsel for the appellant at the very outset has argued that the compensation awarded by the Tribunal is on the higher side and requires to be modified in view of recent a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to

follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

Heard learned counsel for the parties.

In view of the above mentioned judgment, the compensation also requires to be modified and reads as under:-

<u>RE-ASSESSED COMPENSATION</u>

Sr. No.	*Heads*	*Calculations*
(i)	Gross Income	Rs.6700/- per month
(ii)	40% future prospects	Rs.6700+ Rs.2680=Rs.9380/-
(iii)	1/2 deducted as personal expenses of the deceased=	Rs.9380-4690=Rs.4690/-
(iv)	Compensation after multiplier of 18 is applied	Rs.4690 x 12 X 18= Rs.10,13,040/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
	Total compensation to be awarded now	**Rs.10,43,040/-** **rounded of to Rs.10,43,000/-**

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed. However, the appellant is directed to disburse the compensation amount of Rs.10,43,000/- to the claimants within a period of four weeks from the date of receipt of certified copy of this order and inform this court and the appellants are also granted recovery rights to be recovered from the driver and owner. The claimants shall also get interest @ 7.5% per annum from the date of filing of the claim petition, in view of the judgment of Hon'ble the Supreme Court in a case of ***Shri Nagar Mal and ors vs. The Oriental Insurance Co. Ltd and others, passed in Civil Appeal No. 448-2018., decided on 19.01.2018***. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

Accordingly, the appeal stands partly allowed to the above extent.

09.05.2018 **(RITU BAHRI)**

G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***