IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 11.01.2018

FAO No.2817 of 2015 (O&M)

Poonam and others ...Appellants

Versus

Dalbir Singh and others ...Respondents

FAO No.3564 of 2016 (O&M)

Smt. Suman and others ...Appellants

Versus

Dalbir Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sandeep K. Sharma, Advocate
for the appellants in FAO No.2817 of 2015.

Mr. Vivek Suri, Advocate
for the appellants in FAO No.3564 of 2016.

Mr. Subhash Goyal, Advocate
for Reliance General Ins. Co. Ltd.

Mr. Sandeep Suri, Advocate
for National Insurance Co. Ltd.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2817 of 2015 and 3564 of 2016 as these have emerged out of the same accident that took place on 03.01.2012.

FAO No.2817 of 2015

CM No.8716-CII of 2015

Heard.

For the reasons stated in the application supported by an affidavit of Smt. Poonam, one of the appellants, same is allowed. Delay of 02 days in filing the appeal is condoned.

Main Case

Poonam and others have filed the appeal seeking enhancement of compensation in regard to death of Atul Kumar @ Atul Sharma.

The Tribunal has awarded compensation to the tune of Rs.20,82,072/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.13,000/-
2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.18,72,072/-
5. Loss of consortium	Rs.1,00,000/-
6. Loss of love and affection/care and guidance to minor child	Rs.1,00,000/-
7. Funeral and transportation expenses	Rs.10,000/-

Counsel for the claimants has submitted that the Tribunal has computed loss of dependency by taking into account annual income of the deceased at Rs.1,56,000/- on the basis of income tax return Ex.P20. It is argued that the claimants examined Ajit PW2 to prove the salary certificate Ex.P17 and salary statement Mark A as an evidence of monthly salary of the deceased at Rs.15,000/-. According to counsel, loss of dependency is liable to be assessed on the basis of income of the deceased at Rs.15,000/- per month. Another submission made by counsel is that the Tribunal has not allowed benefit of increase in income for future prospects. The Tribunal has wrongly ignored dependency of father of the deceased while allowing deduction for personal expenses to the extent of 1/3rd in place of 1/4th

Counsel representing the insurance companies of the vehicles involved in the occurrence would urge that the Tribunal has rightly relied upon the latest income tax return filed by the deceased for computing loss of income. It is argued that testimony of Ajit PW2 with regard to salary of the deceased at Rs.15,000/- per month is not supported by any account books maintained by employer of the deceased nor there is any documentary evidence with regard to payment of Rs.15,000/- per month to the deceased for the relevant period. In addition, it is argued that compensation allowed under conventional heads needs modification in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Counsel for the claimants has not disputed that testimony of Ajit PW2 and so also the salary certificate Ex.P17 do not get substantiated from any account books maintained by employer of the deceased. Under the circumstances, the Tribunal has rightly relied upon the latest income tax return filed by the deceased for computing loss of dependency. The deceased was 27 years old at the time of occurrence, therefore, multiplier would be 17 in place of 18. The claimants shall be entitled to increase in income for future prospects @ 40% in the light of judgment of Hon'ble the Supreme Court in **Pranay Sethi's case** (supra).

The Tribunal has allowed deduction to the extent to $1/3^{rd}$. The application for compensation was filed by the widow, minor child and parents of deceased. The father of the deceased is stated to be 54 years old. There is nothing on record suggestive of the fact that father of the deceased was suffering from any disability rendering him dependent upon his son. That being so, no fault can be found in the conclusion of the Tribunal by rejecting claim of father of the deceased. In view of the above, loss of dependency comes to Rs.24,75,200/- (13,000 x 12 x 17) + (40% future prospects) – ($1/3^{rd}$ deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Funeral expenses	Rs.15,000/-
2. Loss of estate	Rs.15,000/-
3. Loss of consortium	Rs.40,000/-

The total compensation comes to Rs.25,45,200/- and the additional amount is Rs.4,63,128/- (25,45,200 – 20,82,072), payable with interest @ 7.5% per annum from the date of petition till realization to widow and minor child of the deceased in the ratio 40:60. The share of minor child shall be deposited in FDR payable on her attaining age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms. The claim for enhancement of compensation has been disposed of but without prejudice to right of the insurance companies in the pending appeals filed by them. Other terms and conditions of the award shall remain intact subject to outcome of appeals filed by the insurance companies.

FAO No.3564 of 2016

The claimants are in appeal seeking enhancement of compensation in regard to death of Dinesh.

The Tribunal has assessed compensation to the tune of Rs.59,47,500/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.25,000/-
2. Multiplier	17
3. Addition in income for future prospects	50%
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.57,37,500/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of care and guidance to minor child	Rs.1,00,000/-
8. Funeral and transportation expenses	Rs.10,000/-

However, an amount of Rs.44,94,641/- paid to family of the deceased, detailed in para 28 of the award as deposed by Biswanath Panda from Rajputana Rifle RW1 towards DCRG, Army Central Welfare Funds, Group Insurance etc. was ordered to be deducted out of compensation assessed by the Tribunal and eventually the claimants were held entitled to an amount of Rs.14,52,859/-.

Counsel for the claimants would urge that the Tribunal in para 29 has noticed salary of the deceased at Rs.25,481/- but has wrongly denied benefit of Rs.481/- per month while computing loss of dependency. It is argued with vehemence that the Tribunal has grossly erred by deducting pensionary benefits available to family of the deceased which are not amenable to deduction out of compensation assessed by the Tribunal in the light of catena of judgments of Hon'ble the Supreme Court.

Counsel representing the insurance companies of the vehicles involved in the accident has not disputed that amount paid to family of the deceased towards pensionary benefits etc. is not amenable to deduction out of compensation assessed by the Tribunal. However, Sh. Sandeep Suri, counsel for the National Insurance Company Limited has apprised the Court that total amount paid to family members of the deceased is Rs.24,94,641/- but the Tribunal has wrongly calculated it at Rs.44,94,641. It is further argued that compensation awarded by the Tribunal under conventional heads is liable to be reduced in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.**

Perusal of the award leaves no manner of doubt that salary of the deceased was Rs.25,481/-, therefore, the entire salary is to be taken into account for computing loss of dependency. After deducting liability to pay income tax i.e. Rs.5577/-, annual income comes to Rs.3,00,195/-. The addition in income for future prospects, multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.57,41,229/- (3,00,195 x 17) + (50% future prospects) – (1/4th deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Funeral expenses	Rs.15,000/-
2. Loss of estate	Rs.15,000/-
3. Loss of consortium	Rs.40,000/-

The total compensation comes to Rs.58,11,229/-. As no amount payable to family of the deceased as retiral or other benefits is amenable to deduction, claimants shall be entitled to an amount of Rs.43,58,370/- (58,11,229 - 14,52,859) with interest @ 7.5% per annum from the date of petition till realization, to be shared by the widow and minor children to the extent of 95% in equal shares and the remaining 5% shall be payable to mother of the deceased. The liability to pay compensation would be as per the award passed by the Tribunal but subject to outcome of the appeals preferred by the insurance companies.

The appeal is partly allowed in the aforesaid terms.

11.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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