IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Cross objections 239 CII of 2016 in/and
FAO 3096 of 2015 (O&M)
Date of decision: 19.04.2018

National Insurance Co Limited .... *Appellant*

Versus

Ram Narain and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. R C Gupta, Advocate
for the petitioner

Mr. Manoj Kumar Sood, Advocate
for the cross objectors/respondent No. 1 to 3

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeal and cross objections as these have emerged out of the same award dated 10.02.2015 passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been awarded on account of death of Jitender in a motor vehicular accident that took place on 27.08.2013.

FAO 3096 of 2015 has been filed by the insurance company whereas cross objections 239 CII of 2016 have been filed by the claimants/respondents No. 1 to 3.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal.

FAO and Cross objections

The Tribunal has awarded compensation of Rs.14,46,000.00, detailed hereunder:-

Monthly income of the deceased	*Rs.6,000.00*
Deduction for personal expenses	1/3rd
Addition in income for future prospects	50%
Multiplier	18
Loss of dependency	Rs.12,96,000.00
Expenses of funeral and transportation of dead body	50,000.00
Loss of love and affection etc.	Rs.1,00,000.00

Counsel for the insurance company would argue that the claimants failed to establish their plea by adducing satisfactory evidence that the deceased was working with M/s RTGS Limited much less at salary of Rs.10,000.00 per month. The Tribunal has assessed income at Rs.6,000.00 per month by taking into consideration the minimum wage but the minimum wage available at the relevant time was less than Rs.6,000.00. As application for compensation was filed by the parents and brother of the deceased, admissible deduction for personal expenses should be 50% in the light of judgment of Hon'ble the Supreme Court ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77.*** Addition in income for future prospects should be 40% and compensation allowed under conventional heads needs to be restricted to Rs.30,000.00 in the light of latest judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.***

I have heard counsel for the parties and perused the paper book particularly the award.

Perusal of the award makes it evident that the claimants did not examine a witness from M/s RTGS Limited to prove employment and salary of deceased with the aforesaid concern, therefore, claimants failed to lead satisfactory evidence that the deceased was earning Rs.10,000.00 per month by working with the aforesaid concern. The Tribunal has determined income of the deceased on the basis of minimum wage. On consideration of notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.5,350.00.

As has been rightly argued by counsel for the insurance company, deduction for personal expenses would be 50% as claim petition has been filed by the parents and younger sibling of the deceased. In the presence of father, younger brother cannot be held to be dependent upon his (deceased brother's) income, unless it is proved that father of the deceased has some disability to impair his capacity to earn livelihood for his family. Admissible increase for future prospects would be 40% in the light of latest judgment *Pranay Sethi and other's* case (supra). Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.8,08,920.00 (Rs.11,55,600.00 i.e. 5,350 x 12 x 18 + Rs.4,62,240.00 (40% future prospects) – Rs.8,08,920.00 (50% deduction).

Under conventional heads, claimants shall be entitled to Rs.30,000.00 i.e. Rs.15,000.00 for funeral expenses and Rs.15,000.00 for loss of estate.

Counsel for the insurance company has raised an argument that penal interest allowed by the Tribunal @12% per annum in the eventuality of the respondents having failed to make payment within two months should be set aside. Contention raised by counsel for the insurance company in this regard is meritorious, in the light of judgment of Hon'ble the Supreme

Court ***National Insurance Co Limited vs. Keshav Bahadur, 2004 ACJ 648***. The claimants shall be entitled to interest at the rate of 9% per annum from the date of petition till realization on compensation payable to them.

Total compensation is Rs.8,38,920.00 (Rs.8,08,920 + Rs.30,000) and compensation awarded by the Tribunal is reduced to the extent of Rs.6,07,080.00 (Rs.14,46,000.00 – Rs.8,38,920.00). Excess amount, if already paid by the insurance company, can be recovered by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, cross objections filed by the claimants are dismissed.

(Rekha Mittal)
Judge

19.04.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No