IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 639 of 2013 (O&M)
Date of Decision : 23.01.2018

National Insurance Company Ltd. .....Appellant

Versus

Bindu and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Aseem Aggarwal, Advocate
for the appellant.

None for respondents no. 1 to 3.

Surinder Gupta, J.

This is appeal filed by National Insurance Company Ltd. against award dated 18.09.2012 passed by the Motor Accident Claims Tribunal, Hisar (later referred to as 'the Tribunal') for death of Parshotam Kumar (later referred to as 'the deceased'), in a motor vehicle accident on 17.04.2011.

2. As award of the Tribunal has been challenged only on the quantum of compensation awarded to claimants, detailed facts of the case are being skipped for the sake of brevity.

3. The Tribunal assessed compensation of ₹16,73,000/- to claimants, which was computed as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Parshotam Kumar
(ii)	Date of accident	17.04.2011
(iii)	Age of the deceased	42 years
(iv)	Monthly income of the deceased	₹10000
(v)	30% of (iv) added towards future prospects	(₹10000+₹3000)= ₹ 13000 per month
(vi)	1/4th of (v) above deducted towards personal expenses	₹13000- ₹3250) = ₹9750 per month

(vii)	Compensation calculated after applying the multiplier of 14	(₹9750X12X14) = ₹1638000
(viii)	Funeral expenses	₹5000
(ix)	Compensation for loss of love and affection & consortium	₹25000
(x)	Compensation for loss of estate	₹5000
	Total	**₹1673000**

4. Learned counsel for the appellant has assailed the award on the ground that Tribunal has wrongly taken income of the deceased as ₹10,000/- per month. His income was proved on record as ₹5000/- only. Testimonies of PW-2 Smt. Bindu and PW-5 Bajrang Dass regarding income of the deceased and his part time employment with them are not relevant. Though, claimants have propounded that deceased during his part time job as accountant with Mahaluxmi Rice Mill, Hansi, M/s Madu Mal Jai Narayan, Commission Agent, New Anaj Mandi, Hansi and M/s Om Durga Dunlup Footwear, G.T. Road, Hansi was getting ₹5000/-, ₹3000/- and ₹2000/- respectively from above referred employers but they have failed to prove by leading cogent and convincing evidence that the deceased was employed with Om Durga Dunlup Footwear and Madu Mal Jai Narayan, Commission Agent. He further submits that the Tribunal has made addition of 30% in income of the deceased towards future prospects but as per law laid down by Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009***, 25% addition could be made in income of the self employed person of the age of more than 40 years towards his future prospects.

5. Firstly, I have a look on observations of the Tribunal while assessing income of the deceased as ₹10,000/-, which are as follows:-

> *"13. ……………….The petitioners/claimants have placed on record certificate Ex. P1 which has been proved by PW-3 Surender Sharma, who in his affidavit Ex. PW3/A tendered in his examination-in-chief has stated that Parshotam*

Kumar (now deceased) was working as an Accountant with Maha Luxmi Rice Mill, Jind Road, Hansi, M/s Madu Mal Jai Narayan, Commission Agent, Hansi and also in his firm being run under the name and style of M/s Om Durga Dunlup Footwear, G.T. Road, Hansi and he used to pay salary of ₹2000/- per month. He has proved salary certificate Ex. P1, copy of account statement and ITR for the financial year 2010-2011 and assessment year 2011-12, Ex. P2 and Ex. P3, respectively. This witness further stated in his affidavit that the deceased was also operating at truck.

PW4 Rajesh, partner of M/s Maha Luxmi Rice Mill, Jind Road, Hansi, on the basis of summoned record of salary of said firm, has stated that Purshotam was working as Accountant in their firm. They used to pay ₹5000/- per month to him as salary. He proved the salary record of Purshotam for the month of March, 2011 as Ex. P4 and for the month of April as Ex. P5. He has also proved the EPF statement of Purshotam from April 2010 to March, 2011 as Ex. P6.

PW5 Bajrang Dass deposed that he is President of Veyapar Mandal, Hansi and earlier he was President of Anaj Mandi Hansi. He further stated that he is proprietor of Shop No. 82, Anaj Mandi, Hansi which is under the name of M/s Maru Mal Jai Narain. PW-5 brought the summoned record. This witness s tated that as per the record, Purshotam Kumar son of Sh. Ram Kumar was working as a part time accountant in his firm and he used to pay him ₹3000/- per month. He further stated that deceased also used to work as accountant with Maha Luxmi Rice Mill and Om Durga Dunlup Footwear. He proved copy of cash book in which salary of Purshotam is shown, as Ex. P7.

No documentary or any other cogent evidence has been placed on record by the respondents to rebut the aforesaid statements of PW3, PW4 and PW5 and documents Ex. P-1 to Ex. P-7. There is nothing on record to suggest that the aforesaid statements made by PW3 to PW5 *and documents Ex. P1 to Ex. P7 proved by these witnesses are forged or fabricated.*

In such circumstances and from the statements made by PW3 to PW5 and documents Ex. P1 to Ex. P7, it is proved on record that deceased Purshotam Kumar was earning ₹10,000/- per moth while working as accountant with Shri Mahalumxi Rice Mill Jind Road, Hansi, M/s madu Mal Jai Narayan, Commission Agent, New Anaj Mandi, Hansi and Om Durga Dunlup Footwear, G.T. Road, Hansi."

6. On perusal of statements of aforesaid witnesses, I find that the same could not be shattered in cross-examination. PW-3 Surender Sharma, not only produced salary certificate but also income tax returns of his firm for the financial year of 2010-2011 and assessment year 2011-2012 as Ex. P-2 and Ex. P-3.

7. Learned counsel for the appellant has drawn my attention towards salary certificate of the deceased Ex. P-1, which bears date as 16.02.2012 and has argued that it was issued after the death of Parshotam Kumar. It is correct that certificate was issued after death of Parshotam Kumar. Ex. P-1 is not the salary certificate but a certificate to the effect that Parshotam Kumar was employed as part time accountant with PW-3 and was getting salary of ₹2000/- per month. Though, in the income tax return specific salary paid to the deceased is not mentioned but it is specifically mentioned that firm was paying a specific amount as salary. PW-5 Bajrang Dass was President of Anaj Mandi, Hansi. He has produced copy of cash book (Ex. P-7) in which salary of the deceased is shown. He has also stated that deceased was working as part time accountant with Maha Luxmi Rice Mill and Om Durga Dunlup Footwear as well. This fact has also been so stated by PW-3 Surender Sharma. In the absence of any evidence to rebut their testimonies, I am of the opinion that the Tribunal has rightly relied on statements of these witnesses while assessing

income of the deceased and observations of the Tribunal in this regard calls for no interference.

8. In case of ***Pranay Sethi (supra),*** Hon'ble Apex Court has held that in case of self employed persons in the age group of 40 to 50, addition of 25% is to be made in his income towards future prospects. The deceased was 42 years of age and addition is to be made in his income as per dictum of Hon'ble Apex Court in above referred case. Compensation of ₹70,000/- on conventional heads is also to be allowed to claimants as per observations of Hon'ble Apex Court in case of ***Pranay Sethi (supra).***

9. In view of my above discussion, compensation to which claimants are entitled is reassessed as followings:-

Sr. No.	***Heads***	***Calculation***
(i)	Name of the deceased	Parshotam Kumar
(ii)	Date of accident	17.04.2011
(iii)	Age of the deceased	42 years
(iv)	Monthly income of the deceased	₹10000
(v)	25% of (iv) is to be added towards future prospects	(₹10000+₹2500)= ₹ 12500 per month
(vi)	1/4th of (v) above deducted towards personal expenses	₹12500- ₹3125) = ₹9375 per month
(vii)	Compensation calculated after applying the multiplier of 14	(₹9375X12X14) = ₹1575000
(viii)	Funeral expenses	₹15000
(ix)	Compensation for loss of love and affection & consortium	₹40000
(x)	Compensation for loss of estate	₹15000
	Total	**₹1645000**

10. As a sequel of my discussion above, the instant appeal has merit and the same is partly accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Parshotam Kumar is reduced from ₹16,73,000/- to ₹16,45,000/-. The amount of compensation will carry interest as awarded by Tribunal from the date of filing of the claim petition till

actual realization. Appellant-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the amount of compensation as follows:-

(i)	Claimant- respondent no. 1 (wife)	:	50%
(ii)	Claimant- respondent no. 2 (daughter)	:	25%
(iii)	Claimant-respondent no. 3 (son)	:	25%

January 23, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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