IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 29.05.2018

FAO No.3239 of 2016 (O&M)

New India Assurance Co. Ltd. .. Appellant

Versus

Smt. Surti Devi and others .. Respondents

FAO No.6343 of 2017 (O&M)

Smt. Surti Devi and another .. Appellants

Versus

Surinder Kumar and others .. Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for the insurance company.

Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate for the claimants.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.3239 of 2016 and 6343 of 2017 as these have emanated out of the same award dated 04.03.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been allowed on account of death of Baljinder Singh in a motor vehicular accident that took place on 24.05.2015.

FAO No.3239 of 2016 has been filed by the insurance company whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been filed to challenge quantum of compensation.

The Tribunal has awarded compensation of Rs.15,85,600/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.10,200/-
2. Addition in income for future prospects	50%
3. Multiplier	17
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.15,60,600/-
6. Transportation and funeral expenses	Rs.25,000/-

Counsel for the insurance company would argue that the Tribunal has assessed income of the deceased at Rs.10,200/- per month on the basis of Deputy Commissioner's rates but Deputy Commissioner's rates are available to employees paid out of contingency. It is further argued that in absence of clear evidence by the appellants, income of the deceased is liable to be assessed on the basis of minimum wage fixed by the Government of Haryana and available at the relevant time. Addition in income for future prospects should be 40% 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 representing the claimants has supported assessment made by the Tribunal. It is further argued that as per his understanding, the insurance company has already paid compensation to the claimants, therefore, insurance company is not entitled to recover the amount paid in excess. Adequate compensation may be allowed under conventional heads.

As has been rightly argued by counsel for the insurance company, the Tribunal has assessed income of the deceased being a casual labour @ Rs.10,200/- per month on the basis of order dated 20.02.2015 passed by the DC, Kurukshetra. As DC rates are meant for payment of wages out of contingency, the same cannot be a guiding factor for assessment of compensation in cases of motor vehicular accidents. Taking a clue from minimum wage available at the relevant time, income of the deceased is assessed at Rs.5850/- per month. Admissible increase for future prospects would be @ 40% in the light of judgment of Hon'ble the Supreme Court in **Pranay Sethi's case (supra)**. The Tribunal has rightly allowed deduction of 50% and multiplier of 17 for computing loss of dependency. In this manner, loss of dependency is calculated at Rs.8,35,380/- [(Rs.5850 x 12 x 17) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, claimants shall be entitled to Rs.30,000/-, i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

Total compensation is Rs.8,65,380/- and compensation awarded by the Tribunal is reduced to the extent of Rs.7,20,220/- (15,85,600 - 8,65,380). The insurance company shall be at liberty to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal filed by the insurance company is partly allowed. As a natural corollary, appeal preferred by the claimants fails and is accordingly dismissed.

No order as to costs.

29.05.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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