IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 6265 of 2014 (O&M)
Date of decision: 11.07.2018

Vijay Pal and another .... *Appellant*

Versus

Vijay and others ....*Respondents*

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

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Present: Mr. Kamal Narula, Advocate
for the appellants

Ms Vandana Malhotra, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Sony in a motor vehicular accident that took place on 27.08.2012.

The Tribunal has awarded compensation of Rs.2,50,000.00 and the insurance company has been given right of recovery against respondents No. 1 and 2, driver and owner, respectively of the offending vehicle on the premise that the vehicle was being used for a commercial purpose and the driver did not possess a valid and effective licence.

Any violation of terms and conditions of the insurance policy can entitle the insurer to press for right of recovery against the insured only but not against driver of the vehicle with whom there is no privity of contract of insurance entered into between the insurer and insured. Under the circumstances, respondent No. 1 need not to be heard in the matter and his service is dispensed with.

This brings the Court to plea of the claimants for enhancement of compensation.

The deceased was 17 years old son of the claimants and a student of 11th standard at the time of accident. There is nothing on record suggestive of the fact that the deceased was suffering any ailment rendering him unable to work and earn livelihood for his family. Taking a clue from the minimum wage available at the relevant time, income of the deceased is assessed at Rs.5,000.00. As the deceased was 17 years old, claimants shall be entitled to addition in income for future prospects to the extent of 40%. In this context, reference may be made to judgment of this Court ***National Insurance Co Limited vs. Pushpa Singh Chauhan and others*** (FAO No. 1502 of 2015, decided on 20.03.2015), affirmed by Hon'ble the Supreme Court in SLP (c) No. 19533 of 2015.

Application for compensation has been filed by parents of the deceased, admissible deduction for personal expenses would be 50% and appropriate multiplier to be 18 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.*** In this manner, loss of dependency is Rs. 7,56,000.00 {Rs.10,80,000.00 (Rs.5,000x12x18) + Rs.4,32,000.00 (40% future prospects) – Rs.7,56,000.00 (50% deduction towards personal expenses)}

Under conventional heads, claimants shall be entitled to Rs.30,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017***

SC 1270, detailed hereunder:-

Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.7,86,000.00 (Rs.7,56,000.00 + Rs.30,000) and additional amount is Rs.5,36,000.00 (Rs.7,86,000.00 - Rs.2,50,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization. Respondents No. 1 to 3 shall be liable to pay additional amount to the claimants but the insurance company shall have right of recovery only against Sarjeet Singh respondent No. 2 (insured/ owner of the vehicle in question).

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

11.07.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No