215

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-629-2014 (O&M)
Date of decision : 30.01.2018

National Insurance Company Ltd.

... Appellant(s)

Versus

Swarno and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vinod Gupta, Advocate
for the appellant.

Ms. Amandeep Kaur, Advocate
for respondent Nos.1 to 3.

Mr. Mukesh Kumar Bhatnagar, Advocate
for respondent Nos.4 and 5.

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AMIT RAWAL, J. (ORAL)

The appellant-Insurance Company is in appeal against the Award rendered by the Tribunal, whereby a compensation of ₹ 7,39,400/- along with interest @ 7.5% per annum, in respect of death of Piara Lal has been awarded.

Learned counsel for the appellant-Insurance Company submits that the Tribunal has awarded the compensation of ₹7,39,400/- by taking the income of the deceased as ₹6,000/- and provide 15% future prospects i.e. ₹400/- by applying multiplier of '12', much less, an amount of ₹1,25,000/- under conventional heads. The Tribunal has wrongly applied the multiplier of '12', whereas it should have '11' as the age of the deceased was at the time of accident 52 years. He further submits that as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No.25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s Pranay Sethi and others"***, the amount of compensation towards conventional heads cannot be exceed more than ₹70,000/-, yet the Tribunal has granted the compensation of ₹1,25,000/- under conventional heads, thus, urges this Court for setting aside the award, under challenge.

Learned counsel for the respondent(s)-claimant(s) submits that the judgment would apply only perspectively and not retrospectively, therefore, there is no illegality and perversity in the award, under challenge, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that it is no where mentioned that the judgment would apply prospectively. The Tribunal has already granted ₹1,00,000/- towards loss of consortium and an amount of ₹25,000/- on account of funeral expenses, which is on higher side. I hereby reduce the same from ₹1,25,000/- to ₹70,000/- towards conventional heads i.e. loss of estate loss of consortium and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No.25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s Pranay Sethi and others"*** and by exercising the power under Order 41 Rule 33 CPC as per the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"U.P.S.R.T.C. V/s Km. Mamta and others" (2016) 4 SCC 172.*** As regards the multiplier, the Tribunal has wrongly applied the multiplier of '12' as it should have '11', for, the age of the deceased at the time of accident was 52 years. Accordingly, I re-assess the compensation by taking the income of the deceased as ₹6,000/- per month as has been taken by the Tribunal and provided 10% increase towards future prospects and apply a multiplier of '11', much less, deduction of 1/3rd to assess the loss of dependency as ₹5,80,800/- and add an amount of ₹70,000/- towards conventional heads as per the judgment cited supra. The claimants shall be entitled to the compensation of ₹6,50,800/-. The liability shall remain the same as has already been determined by the Tribunal.

However, the statutory amount of ₹25,000/- deposited by the Insurance Company before this Court at the time of filing of the appeal shall be transmitted to the Tribunal for part satisfaction of the compensation awarded by the Tribunal.

It is clear that in case the Insurance Company has already deposited the compensation and withdrawn by the claimants, it shall be open to the Insurance Company to recover the excess amount in accordance with law.

With the aforementioned observations, the award rendered by the Tribunal is modified to the aforesaid extent. The appeal is partly allowed.

(AMIT RAWAL)
JUDGE

30.01.2018
Yogesh Sharma

Whether speaking/reasoned **[✓ Yes]/ No**

Whether Reportable **Yes/ [✓ No]**