IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O No. 5015 of 2015
Date of decision:- 15.01.2018

New India Assurance Co. Ltd. ...Appellant

Versus

Padam Kumar Goyal and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Aayush Gupta, Advocate for
Mr. Madan Gupta, Advocate
for respondent No. 1 and 2.

None for respondent Nos. 3 and 4 despite service.

RITU BAHRI J. (Oral)

The present appeal has been preferred by the Insurance Company-appellant, seeking modification of the award passed by the learned Addl. District Judge, Kurukshetra (for short, 'the Tribunal') to the tune of Rs.27,03,400/-, vide impugned award dated 30.04.2015 in a claim petition filed under Section 166 and 140 of the Motor Vehicles Act (for short 'the Act').

On 22.08.2011 Honey Goyal along with his family members went to Manan Dham Mandir, Ghaziabad to pay obeisance and when he came out of the temple, the offending vehicle make TATA 1109 bearing registration No. UUP-14-AF-9570 hit Honey Goyal, Umesh Jain, Sunita, Sumit Gupta, Smt. Kusum, Smt Pushpa, Gaurav, Smt. Asju, Yogesh goyal and many other persons standing near the temple. All the persons suffered multiple serious injuries and Honey Goyal died in this accident. F.I.R under Sections 279/304-A IPC was registered against the driver of the offending vehicle. After investigation, the challan was also presented.

COMPENSATION AWARDED BY THE TRIBUNAL

Sr. No.	***Heads***	***Calculations***
(i)	Gross Income	Rs.3,11,100
(ii)	Income exempted from income tax	Rs.1,80,000/-
(iii)	Taxable Income	Rs1,31,000/-
(iv)	Income Tax @ 10% on taxable income	Rs.13,110/-
(v)	Education Cess @3%	Rs.394/-
(vi)	Total Tax	Rs.13,504/-
	Net Income	**Rs.2,97,596/-**
(iii)	1/2 deducted as personal expenses of the deceased=	Rs.1,48,798/- rounded as Rs.1,48,800/-
(iv)	Compensation after multiplier of 18 is applied	Rs.1,48,800 X 18= Rs.26,78,400/-
(v)	Funeral expenses	Rs.25,000/-
	Total	**Rs.27,03,400/-**

Learned counsel for the appellant-Insurance Company argued that there were 06 claim petitions filed by the claimants and out of 06, 5 claim petitions were filed at Ghaziabad and the present claim petition was filed at Kurukshetra. In all the above 05 claim petitions, recovery rights had been granted against the owner Shiv Dayal on the grounds of driving licence but in the present case, the Insurance Company has not been granted recovery rights.

Learned counsel further argued that the compensation awarded in the present case is also on the higher side as the deceased was 20 years old boy and was unmarried and the income of the deceased was taken at

Rs.3,11,100/- whereas the Income has been deducted only Rs.13,100/- whereas the income tax has been deducted at Rs.31,100/- as 10% of the income and moreover, the income tax exemption in the year 2011 was Rs.1,50,000/-.

On the other hand, learned counsel has relied upon a judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has*

been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

Heard learned counsel for the parties.

The fact which is not in dispute that in the 05 claim petitions filed at Ghaziabad, the recovery rights were granted against the owner-Shiv Dayal. Thus, once the recovery rights were granted against the owner-Shiv Dayal on the grounds of driving licence, in the present case as well, the Insurance Company is liable to get recovery rights.

Now coming to the compensation part, the compensation also requires to be modified and reads as under:-

RE-ASSESSED COMPENSATION

Sr. No.	***Heads***	***Calculations***
(i)	Gross Income	Rs.2,07,400
(ii)	40% of (i) above to be added as future prospects=	Rs.207400+Rs.82960=Rs.2,90,360/-
(iii)	Income exempted from income tax	Rs.1,80,000/-
(iv)	Taxable Income	Rs1,10,360/-
(v)	Income Tax @ 10% on taxable income	Rs.11,000/-
(vi)	**Net Income**	**Rs.2,90,360-Rs.11000/-=Rs.2,79,360/-**
(vii)	1/2 deducted as personal expenses of the deceased=	Rs.2,79,360-1,39,680/-=Rs,1,39,680/-
(viii)	Compensation after multiplier of 18 is applied	Rs.1,39,680 X 18= Rs.25,14,240/-
(ix)	Conventional heads (loss of estate and funeral expenses)	Rs.30,000/-
(x)	**Total compensation to be awarded now**	**Rs.25,44,240/-**

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed. However, the appellant is directed to disburse the compensation amount of Rs.25,44,240/- to the claimants within a period of four weeks from the date of receipt of certified copy of this order and inform this court and the appellants are also granted recovery rights to be recovered from the driver and owner. The claimants shall also get interest @ 9% per annum from the date of filing of the claim petition on the above amount, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The remaining conditions of disbursal of amount shall remain unaltered.

15.01.2018 **(RITU BAHRI)**
G Arora ***JUDGE***

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