IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 17.11.2018

FAO No.4004 of 2016 (O&M)

NATIONAL INSURANCE COMPANY LTD ... Appellant

Versus

SUDESH AND ORS ... Respondents

FAO No.5927 of 2016 (O&M)

SUDESH AND ORS ... Appellants

Versus

VIKAS AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mrs. Shamsher Kaur, Advocate
for the insurance company.

Mr. Vinod K. Kanwal, Advocate
for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4004 and 5927 of 2016 as these have emerged out of the same award dated 31.03.2016 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been assessed on account of death of Baljeet Singh in a motor vehicular accident that took place on 07.07.2015.

FAO No.4004 of 2016 has been filed by the National Insurance

Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would fairly inform that appeal has been preferred to assail quantum of compensation assessed by the Tribunal.

The Tribunal has assessed compensation of Rs.14,50,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.10,000/-
2. Addition in income for future prospects	30%
3. Multiplier	14
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.12,60,000/-
6. Expenses on funeral	Rs.20,000/-
7. Loss of love and affection	Rs.1,50,000/-
8. Loss of consortium to widow	Rs.20,000/-

Counsel for the insurance company would urge that income of the deceased assessed by the Tribunal is on higher side and needs reduction. It is argued that though the claimants have raised the plea that deceased was working as an accountant at the commission agents business of Amit Trading Company w.e.f 01.04.2014 at salary of Rs.15,000/- per month but testimony of Surender PW3 and documents produced on record by the witness are not sufficient to accept plea of the claimants that deceased was working as an accountant much less at salary of Rs.15,000/- per month. She has further submitted that compensation allowed under conventional heads needs reduction in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel representing the claimants, on the contrary, has prayed for enhancement of income of the deceased at Rs.15,000/- per month on the basis of documents i.e. Rokar Bahi Ex.PW3/B and ledger book PW3/C produced and proved by Surender PW3. Further submitted that the deceased was matriculate and had certificate in physical education marked as Exs.PH to PJ.

Another submission made by counsel is that the Tribunal has allowed interest @ 7% per annum but the same should be 12% per annum.

I have heard counsel for the parties, perused the paper book particularly copy of the award, testimony of Surender PW3 and documents produced by the witness, made available by counsel for the parties during course of hearing.

The claimants did not examine the proprietor or partner of M/s Amit Trading Company to prove employment and salary of Baljeet. Surender PW3 had stated that he was working with Amit Trading Company, Kalayat. Perusal of the facts elicited in his cross examination would reveal that Surender was getting salary @ Rs.2500/- per month while working as a munshi/accountant. Further, his salary @ Rs.2500/- per month is not mentioned in the accounts month-wise. No document has been produced on record which is written in the hand-writing of Baljeet. Surender has admitted that there is nothing in the hand-writing of Baljeet by stating voluntarily that he used to work under his supervision. As per the income tax return of the firm for the year 2014-15, total income was Rs.3,02,527/- per annum. It is difficult to believe that if a firm is earning Rs.3,02,527/- per annum, it could afford to pay salary of Rs.1,80,000/- per annum to Baljeet. There is no document on record that Baljeet had any educational qualification to maintain accounts of the firm or prior to 01.04.2014, he remained working as an accountant with any other business concern. Taking a cumulative view of the facts and circumstances discussed hereinbefore, the Tribunal has rightly refused to rely upon testimony of Surender to uphold plea of the claimants that Baljeet was working as an accountant at salary of Rs.15,000/- per month. However, in view of minimum wage coupled with educational qualification of the deceased, interest of justice would be served, if income of the deceased is assessed at Rs.6200/- per month. Claimants shall be entitle to addition in income for future prospects @ 25% as the deceased was less than 50 years of age. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,76,500/- [(6200 x 12 x 14) + (25% future prospects) – (1/4th deduction for personal expenses)].

Contention of the claimants that rate of interest allowed by the Tribunal needs enhancement much less @ 12% per annum does not find support from any document on record with regard to bank rate of interest at the relevant time. Accordingly, interest @ 7% per annum allowed by the Tribunal is affirmed.

Under conventional heads, claimants shall be entitle to Rs.1,90,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018,** detailed hereunder:-

1. Loss of consortium to claimants No.1 to 4	Rs.1,60,000/- (Rs.40,000/- each)
2. Expenses on last rites	Rs.15,000/-
3. Loss to estate	Rs.15,000/-

Total compensation is Rs.11,66,500/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,83,500/- (14,50,000 - 11,66,500). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal preferred by the claimants is dismissed.

17.11.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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