IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 06.10.2018

FAO No.4232 of 2016 (O&M)

Smt. Kiran Bala and others ... Appellants

Versus

Manvender Singh and others ... Respondents

FAO No.2247 of 2017 (O&M)

Bharti Axa General Insurance Co. Ltd. ... Appellant

Versus

Smt. Kiran Bala and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Y.S. Rathore, Advocate
for the claimants.

Mr. Rajbir Singh, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4232 of 2016 and 2247 of 2017 as these have emerged out of the same award dated 04.04.2016 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Damodar Dass in a motor vehicular accident that took place on 23.05.2011.

FAO No.4232 of 2016 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by Bharti Axa General Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company').

FAO No.4232 of 2016

The Tribunal has awarded compensation of Rs.9,56,400/- (rounded of to Rs.9,57,000/-), detailed hereunder:-

1. Monthly income of the deceased	Rs.6900/-
2. Multiplier	11
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.6,86,400/-
5. Expenses on funeral and last rites	Rs.20,000/-
6. Loss of love and affection	Rs.1,50,000/-
7. Loss of consortium to the widow	Rs.1,00,000/-

Counsel for the claimants would argue that Damodar Dass was an income tax assessee. The claimants examined witness from the Income Tax Department to prove income tax returns for the assessment years 2009-10 and 2010-11 wherein income of the deceased has been shown as Rs.1,22,500/- and Rs.1,34,400/-, respectively. It is vehemently argued that the Tribunal has seriously erred by assessing income of the deceased at Rs.6900/- per month while ignoring the income tax returns, proved in accordance with law. Claimants are entitle to addition in income for future prospects.

Counsel representing the insurance company, on the contrary, has supported assessment of loss of dependency by the Tribunal but would urge that compensation allowed under conventional heads needs to be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Indisputably, the claimants examined Pankaj Saini, Stenographer Grade-II from the office of Income Tax to prove the returns Exs. P2 and P3. The first return for the assessment year 2009-10 was filed before death of the deceased showing income to the tune of Rs.1,22,500/- per month. In computation of income, income from business or profession is to the tune of Rs.1,17,000/- and the remaining income is from other sources i.e. miscellaneous interest and other income. The second income tax return was filed after death of Damodar Dass and in the said return, income from business or profession is Rs.1,19,400/-. Taking into consideration the first return filed by the deceased, annual income is assessed at Rs.1,17,000/-. Claimants shall be entitle to addition in income for future prospects @ 10% as the deceased was more than 50 years of age at the time of death.

Damodar Dass was born on 16.01.1960 as per his date of birth recorded in the income tax return and other documents on record, therefore, multiplier adopted by the Tribunal is correct and affirmed. The application for compensation has been filed by the widow, two sons and one daughter of the deceased and the Tribunal has rightly allowed deduction for personal expenses to the extent of 1/4th. In this manner, loss of dependency is calculated at Rs.10,61,775/- [(Rs.1,17,000 x 11) + (10% future prospects) –

(1/4th deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to loss of consortium @ 40,000/- each for all the claimants plus Rs.15,000/- for funeral expenses and Rs.15,000/- for loss to estate. Total compensation under conventional heads comes to Rs.1,90,000/-.

Total compensation is Rs.12,51,775/- and the additional amount is Rs.2,94,775/- (12,51,775 - 9,57,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased. 30% of the additional amount shall be released forthwith in favour of widow of the deceased and 70% shall be invested in fixed deposit for a period of three years.

The appeal is partly allowed in the aforesaid terms.

FAO No.2247 of 2017

Along with the appeal, an application has been filed under Section 5 of the Limitation Act for condoning delay of 209 days in filing the appeal.

Counsel for the applicant-appellant would submit that delay in filing the appeal is not intentional much less malafide. The Court needs to adopt liberal and non-pendantic approach while dealing with the question of condonation of delay.

Counsel for the claimants would state that averments raised in the application do not constitute sufficient ground for condoning huge delay of 209 days in filing the appeal. He would further apprise the Court that though the insurance company has deposited the amount of compensation in compliance with order dated 24.04.2017 passed by this Court but till date the claimants have not been paid even a single penny, despite expiry of more than two years since award was passed.

When the facts and circumstances of the present case are examined in the light of judgment of this Court in FAO No.4740 of 2016 decided on 17.10.2016 titled "Bharti Axa General Insurance Company Limited vs. Ram Parshad and others" alongwith connected cases, there is no sufficient cause for condoning huge delay of seven months. As a consequence, application for condonation of delay is liable to be dismissed and ordered accordingly. As application for condonation of delay has not been allowed, the appeal is dismissed being barred by limitation.

No order as to costs.

06.10.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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