IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.02.2018

FAO-4401-2016 (O&M)

Oriental Insurance Co. Ltd. ... Appellant

Versus

Smt. Sundara @ Ram Devi and others ... Respondents

FAO-4321-2017 (O&M)

Smt. Sundara @ Ram Devi ... Appellant

Versus

Jaishok and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Chaudhri, Advocate
for the insurance company.

Mr. Kamaldeep Singh Redhu, Advocate
for the claimant.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4401 of 2016 and 4321 of 2017 as these have emerged out of the same award dated 27.04.2016 passed by the Motor Accidents Claims Tribunal, Rohtak whereby compensation has been awarded on account of death of Suresh Kumar @ Nanhe in a motor vehicular accident that took place on 07.08.2013.

FAO No.4401 of 2016 has been filed by the insurance company whereas FAO No.4321 of 2017 has been filed by the claimant seeking enhancement of compensation.

Counsel for the insurance company has assailed quantum of compensation assessed by the Tribunal primarily on three counts. It is argued that the Tribunal has allowed benefit of increase in income for future prospects @ 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270.** Compensation awarded under conventional heads to the tune of Rs.1.25 lakh should be restricted to Rs.30,000/- in the light of aforesaid judgment. Another submission made by counsel is that the Tribunal has applied multiplier of 17 but the same is liable to be reduced on the basis of age of mother of the deceased, only claimant in the case.

Counsel representing the claimant, on the other hand, would urge that income of the deceased assessed is on lower side and needs enhancement. Another submission made by counsel is that notice of motion was issued only on the question of multiplier.

I have heard counsel for the parties, perused the paper books with assistance rendered by counsel for the parties.

The Tribunal has awarded compensation of Rs.10,43,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Addition in income for future prospects	50%

3. Multiplier	17
4. Deduction for personal expenses	50%
5. Loss of dependency	Rs.9,18,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of love and affection	Rs.1,00,000/-

In the appeal preferred by the insurance company notice of motion was issued on 04.08.2016 and a relevant extract therefrom reads as follows:-

> *"Heard.*
>
> *Learned counsel for the appellant raised the issue that claimant-Sundara is the only dependent of the deceased and the Tribunal has applied the multiplier as per the age of the deceased and not as per the age of the claimant. He argues that where there is single claimant, age of claimant i.e. mother in this case is relevant for the purpose of deciding the question of multiplier.*
>
> *Notice of motion to respondent No.1 only on this point for 16.12.2016."*

The deceased was 30 years old at the time of occurrence. Hon'ble the Supreme Court in landmark judgment **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** laid down certain criteria for assessing compensation in fatal accident cases with a view to bring uniformity in the process of calculating compensation payable to the deceased family to make good the loss as the money can do. While deciding the question of deduction for personal expenses, the Court specifically adverted to the issue that if the deceased happens to be an unmarried person, ordinarily deduction for personal expenses should be 50%. Hon'ble the Court was well conscious of the factum of death of an unmarried person while even deciding the question of multiplier to be allowed. As per the judgment in **Sarla Verma's case** (supra), multiplier of 17 is admissible for the age bracket 26 to 30 years. In the light of enunciation laid down in **Sarla Verma's case** (supra) coupled with judgments of Hon'ble the Supreme Court in **Munna Lal Jain and anr. vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **Pranay Sethi's case** (supra), I find it difficult to accept contention of the insurance company that multiplier adopted by the Tribunal is erroneous or liable to be applied on the basis of age of mother of the deceased. That being so, findings of the Tribunal allowing multiplier of 17 are liable to be affirmed and ordered accordingly.

Counsel for the insurance company has raised issues with regard to addition in income for future prospects and grant of compensation under conventional heads in the light of judgment of **Pranay Sethi's case** (supra). The said judgment came into existence in October, 2017, therefore, there was no occasion for the insurance company to raise such issues at the time of notice of motion. As per the settled position in law, the Tribunal or for that matter the Court has an obligation to assess just compensation which cannot be a bonanza or source of profit or largesse. In view of enunciation laid down in **Pranay Sethi's case** (supra), claimant shall be entitled to increase in income for future prospects @ 40%. Similarly, compensation awarded under conventional heads is restricted to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and another

Rs.15,000/- for loss of estate.

To be fair to the claimant, counsel has raised an issue with regard to income of the deceased assessed by the Tribunal. The Tribunal has assessed income by taking the deceased to be a casual labour. The occurrence in question took place in August, 2013. Taking a clue from the notification issued by the State of Haryana for fixing minimum wage, there is no justification for increase in income of the deceased. In view of the above, loss of dependency comes to Rs.8,56,800/- (Rs.6000 x 12 x 17) + (40% future prospects) – (50% deduction for personal expenses).

Total compensation is Rs.8,86,800/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,56,200/- (10,43,000 – 8,86,800). The insurance company shall be entitled to recover the excess amount, if already paid to the claimant.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimant is dismissed leaving the parties to bear their own costs.

22.02.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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