**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 5623 of 2016(O&M)

Date of decision: 5.10.2018

New India Assurance Co. Ltd. …..Appellant

VERSUS

Zamsida Khattun and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.C. Gupta, Advocate for the appellants.

Mr. Rajan Gandhi, Advocate for respondent Nos.1 to 6.

Mr. Vijay Lath, Advocate for respondents No.7 and 8.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 23.05.2016 passed by Motor Accidents Claims Tribunal, S.A.S. Nagar Mohali (in short 'the Tribunal') whereby compensation has been assessed on account of death of Mohd. Najrudin in a motor vehicular accident that took place on 17.05.2015.

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

The Tribunal has awarded compensation of Rs.22,90,500/- (rounded off to Rs.22,91,000/- detailed hereunder:-

Monthly income of the deceased	Rs.9000/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/4th

Multiplier	17
Loss of dependency	Rs.20,65,500/-
Funeral expenses	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

Counsel for the appellant would urge that there is no evidence on record with regard to avocation and income of the deceased. The minimum wage of a casual labour at the relevant time was approximately Rs.6900/- per month. Addition in income for future prospects at the rate of 50% cannot be allowed in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. Compensation under conventional heads is liable to be modified.

Counsel representing the claimants has supported assessment of compensation by the Tribunal with the submission that the deceased left behind a large family consisting of his widow, three minor children and old age parents, therefore, the Tribunal has rightly assessed his income at Rs.9000/- per month.

Counsel for the claimants is not in a position to point out any materials on record to substantiate plea of the claimants with regard to avocation and income of the deceased. Taking a clue from the notification issued by the State of Punjab fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6900/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,77,980/-[Rs.14,07,600/- (Rs.6900/- x 12 x 17) + Rs.5,63,040/- (40% towards future prospects) – Rs. 4,92,660/- (1/4th deduction towards personal expenses)].

Under conventional heads, claimants shall be entitle to following compensation:-

Loss of consortium to claimants No.1 to 4 at the rate of Rs.40000/- each	Rs.1,60,000/-
Expenses on funeral	Rs.15,000/-
Loss to estate	Rs.15,000/-

In the light of judgment of Constitution Bench by Hon'ble the Supreme Court in **Pranay Sethi and others case (supra)**, claimants shall not be entitle to compensation for loss of love and affection.

In view of the above, total compensation is Rs.16,67,980/- and compensation awarded by the Tribunal is reduced to the extent of Rs.6,23,020/- (Rs.22,91,000/- - Rs.16,67,980/-). The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

OCTOBER 5, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no