214

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8405-2014 (O&M)
Date of decision : 05.02.2018

New India Assurance Company Ltd.

... Appellant(s)

Versus

Meera Devi and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate and
Ms. Priya Deep, Advocate
for the appellant.

Mr. J.P. Jangu, Advocate
for respondent Nos.1 to 4.

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AMIT RAWAL, J. (ORAL)

The appellant-Insurance Company is in appeal against the Award rendered by the Tribunal, whereby a compensation of ₹22,20,500/- along with interest @ 7% per annum, in respect of death of Shyam Kumar who unfortunately died in a motor accident occurred on 19.05.2011, has been awarded.

Learned counsel for the appellant-Insurance Company submits that the Tribunal has awarded the compensation of ₹22,20,500/- by taking the income of the deceased as ₹1,62,520/- per annum (₹13,543/- per month) and provide 30% future prospects, whereas it should have 25%. However, The Tribunal has wrongly applied the deduction of 1/4th instead of 1/3rd as the father of the deceased was not dependent upon his son. He further submits that as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No.25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s Pranay Sethi and others"***, the amount of compensation towards conventional heads cannot be exceed more than ₹70,000/-, whereas the Tribunal has granted the compensation of ₹1,60,000/- under conventional heads, thus, urges this Court for setting aside the award, under challenge.

Learned counsel for the respondent(s)-claimant(s) submits that the judgment would apply only perspectively and not retrospectively, therefore, there is no illegality and perversity in the award, under challenge as the Tribunal has taken care of all the heads sufficiently, thus, urges this Court for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no where mentioned that the judgment would apply prospectively. The Tribunal has already granted ₹1,60,000/- towards conventional heads, which is on higher side and therefore, I hereby reduce the same from ₹1,60,000/- to ₹70,000/- towards conventional heads i.e. loss of estate loss of consortium and funeral expenses as per the latest judgment dated 31.10.2017 rendered by Hon'ble the Supreme Court in ***SLP (Civil) No.25590 of 2014*** titled as ***"National Insurance Company Ltd. V/s Pranay Sethi and others"*** and by exercising the power under Order 41 Rule 33 CPC as per the *ratio decidendi* culled out by the Hon'ble Supreme Court in ***"U.P.S.R.T.C. V/s Km. Mamta and others" (2016) 4 SCC 172.*** As regards the grant of future prospects, the Tribunal has applied 30% future prospects, whereas it should have 25% as the age of the deceased at the time of accident was 48 years. As regards the argument of Mr. Talwar that the father is not dependent upon the deceased, no evidence has been led, in this regard, even in this Court or before the Tribunal, accordingly, the argument of Mr. Talwar is rejected and I take deduction of 1/4th as has been taken by the Tribunal. The compensation is reassessed by taking the income of the deceased as ₹1,62,520/- per annum (₹13,543/- per month) as has been taken by the Tribunal and provided 25% increase towards future prospects, instead of 30% and apply a multiplier of '13', much less, deduction of 1/4th to assess the loss of dependency as ₹19,80,663/- and add an amount of ₹70,000/- towards conventional heads as per the judgment cited supra. The claimants shall be entitled to the compensation of ₹20,50,663/-. The liability shall remain the same as has already been determined by the Tribunal.

However, it is clear that in case the Insurance Company has already deposited the compensation and withdrawn by the claimants, it shall be open to the Insurance Company to recover the excess amount in accordance with law.

With the aforementioned observations, the award rendered by the Tribunal is modified to the aforesaid extent and the appeal is allowed.

(AMIT RAWAL)
JUDGE

05.02.2018
Yogesh Sharma

Whether speaking/reasoned	**Yes**✓/ **No**
Whether Reportable	**Yes/ No**✓