219.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.9124 of 2014 (O&M)
Date of decision:17.04.2018.

Reliance General Insurance Company Limited ... Appellant

Versus

Saroj Devi Sethia and others .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Subhash Goyal, Advocate,
for the appellant.

Mr. Vivek Suri, Advocate,
for respondents No.1 and 2.

HARI PAL VERMA, J. *(Oral)*

CM-25191-CII-2014

Prayer in this application filed under Section 5 of Limitation Act read with Section 151 CPC is for condonation of delay of 9 days in filing the present appeal.

For the reasons stated in the application, same is allowed and the delay of 9 days in filing the appeal is condoned.

FAO No.9124 of 2014

Reliance General Insurance Company has filed the present appeal against the award dated 22.07.2014 passed by Motor Accident Claims Tribunal, Panchkula (for short, "the Tribunal") whereby on account of death of Paras Sethia, who met with a motor vehicular accident on 14.08.2012 and died on 18.08.2012, the Tribunal has awarded a total compensation of ₹12,42,000/- to the claimants.

The accident and liability are not in dispute. What is in dispute is the quantum of compensation awarded to the claimants.

Learned counsel for the appellant-Insurance Company has argued that the deceased- Paras Sethia was about 23 years of age, therefore, as held by the Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others-2017(4) RCR (Civil) 1009***, the claimants were entitled for addition towards future prospects @ 40% whereas the Tribunal has awarded 50%. Similarly, the Tribunal has awarded ₹25,000/- towards loss of estate and ₹25,000/- towards funeral expenses, whereas in the light of ***Pranay Sethi's case*** (supra), this amount has to be ₹15,000/- each (i.e. ₹15,000/- towards funeral expenses and ₹15,000/- towards loss of estate). Thus, he has restricted his argument only to the fact that instead of addition of 50% towards future prospects, the addition should be 40% and instead of ₹50,000/- under conventional heads, it should be ₹30,000/-.

I have heard learned counsel for the appellant.

The connected appeal i.e. FAO No.10173 of 2014 has been dismissed as withdrawn vide separate order of even date.

Learned counsel for the appellant-Insurance Company has raised a limited argument that the claimants are entitled for addition of future prospects @ 40% instead of 50% and under conventional heads, the amount should have been ₹30,000/- instead of ₹50,000/-. There is no dispute that the amount so awarded has already been disbursed.

Considering the law laid down by the Hon'ble Supreme Court in ***Pranay Sethi's case*** (supra), this Court finds that the claimants were entitled to have future prospects @ 40% instead of 50% as awarded by the Tribunal but in view of order dated 22.11.2017 passed by Hon'ble Apex Court in **Civil Appeal No.8611 of 2017**, while dealing with a bunch of petitions/ appeals in **Special Leave Petition (Civil) No.22134 of 2016** titled as "***Hem Raj Versus The Oriental Insurance Company Limited and others***", no recovery can be ordered at this stage.

A similar view has been expressed by the Hon'ble Apex Court in Civil Appeal No.000767 of 2008 arising out of SLP (c) No.23086 of 2016 titled as "***Reliance General Insurance Company Limited Versus Shalu Sharma and others***" that if the amount withdrawn by the claimants exceeds the amount which they are entitled under the judgment, no recovery shall be made.

Though this Court finds that the claimants are entitled for future prospects @ 40%, but in view of orders passed in ***Hem Raj's case*** (supra) and ***Shalu Sharma's case*** (supra), the amount already received by the claimants is not liable to be refunded.

Admittedly, in the present appeal, vide order dated 12.11.2014, the disbursement of compensation had been ordered though subject to adequate surety.

Accordingly, in view of the protection granted by Hon'ble Apex Court, this Court finds that small variations shall not entitle the appellant to effect recovery from the claimants, even if any amount has been paid in excess to the calculations.

Dismissed.

(HARI PAL VERMA)
JUDGE

17.04.2018
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No