IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 26.04.2018

FAO No.9644 of 2014 (O&M)

ORIENTAL INSURANCE COMPANY LTD ... Appellant

Versus

SUMAN BALA & ORS ... Respondents

FAO No.1788 of 2015 (O&M)

SUMAN BALA & ORS ... Appellants

Versus

DHARMENDER AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gurinder Pal Singh, Advocate for the claimants.

Mr. Harsh Aggarwal, Advocate for the insurance company.

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REKHA MITTAL, J. (Oral)

CM No.26703-CII of 2014

Heard.

Allowed as prayed for. Delay of 35 days in filing the appeal stands condoned.

Main Case

This order will dispose of FAO Nos.9644 of 2014 and 1788 of 2015 as these have emerged out of the same award dated 05.07.2014 passed by the Motor Accidents Claims Tribunal, Rewari whereby compensation has been awarded on account of death of Pardeep Kumar in a motor vehicular accident that took place on 18.05.2013.

FAO No.9644 of 2014 has been filed by the Oriental Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.1788 of 2015 by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs.42,93,368/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.19,298/-
2. Addition in income for future prospects	50%
3. Multiplier	16
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.41,68,368/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company has assailed the award primarily on two counts. The first submission made by counsel is that the present is a case of rash and negligent driving of two vehicles i.e. Alto car bearing No.HR-26-AV-4435 driven by the deceased and Trolla No.HR-46-C-6955 by Dharmender, respondent No.1 before the Tribunal. It is argued that as the deceased himself contributed to the occurrence, claimants are not entitled to compensation to the extent of negligence attributable to the deceased.

To assail quantum of compensation, it is argued that the deceased was a Head Constable in the Haryana State and family of the deceased shall be entitled to benefit of compassionate assistance under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'), therefore, compassionate assistance is liable to be deducted out of compensation assessed in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.** In addition, it is argued that compensation allowed under conventional heads needs to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. It is further argued that liability to pay income tax may be deducted while computing loss of dependency.

Counsel representing the claimants has supported the award with the submission that there is no justification for reduction in compensation. As family of the deceased would have been entitled to pension, had Rules of 2006 been not in existence, financial assistance available to family should not be deducted.

So far as plea of the insurance company that contributory negligence in causing the occurrence is liable to be attributed to the deceased, he has failed to point out any materials on record to substantiate his contention in this regard or to point out an error in findings of the Tribunal on issue No.1. As such, plea of the insurance company on this aspect is not meritorious and accordingly rejected.

This brings the Court to compensation assessed by the Tribunal. The claimants examined HC Tarun Kumar PW4 to prove salary of the deceased. As per statement of HC Tarun Kumar, deceased was getting salary of Rs.20,618/- per month and details thereof have been reproduced in para 11 of the award. The Tribunal has taken into consideration the basic pay Rs.8820/-, grade pay Rs.2400/- and DA Rs.8078 to compute monthly loss of dependency at Rs.19,298/- per month. The deceased was entitled to various benefits like CA, MA, Ration allowance and KMA which would have been available to family of the deceased had he remained alive. These allowances cannot be ignored for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313**. Annual income @ 20,618/- is Rs.2,47,416/-. After deducting liability to pay income tax (Rs.4741/-), annual loss of dependency is Rs.2,42,275/-. The addition in income for future prospects, multiplier and deduction for personal expenses allowed by the Tribunal are correct and ordered to be affirmed. In this manner, loss of dependency comes to Rs.43,68,150/- (Rs.2,42,275 x 16) + (50% future prospects) - (1/4th deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that the claimants shall be entitled to

Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss to estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.44,38,150/-.

HC Tarun Kumar PW4 has deposed that under the Rules of 2006, family of the deceased shall be entitled to payment of Rs.21,818/- per month for a period of 15 years i.e. 180 months (Rs.39,27,240/-). As has been rightly argued by counsel for the claimants that had the Rules of 2006 been not in existence, family of the deceased would have been entitled to pension at least @ 50% of the last drawn pay. When the case is examined in the light of judgment of this Court **Kamla Devi and others VS. Sahib Singh and others, FAO No.3064 of 2013, decided on 30.11.2017,** only 50% of amount available to family under the Rules of 2006 is amenable to deduction. After deducting 50% of the amount, compensation payable to the claimants comes to Rs.24,74,530/- (44,38,150 – 19,63,620). As a result, compensation awarded by the Tribunal is reduced to the extent of Rs. 18,18,838/- (42,93,368 - 24,74,530).

For the foregoing reasons, the appeal filed by the claimants is disposed of in the aforesaid terms. However, the appeal filed by the insurance company is partly allowed in the terms indicated hereinbefore.

26.04.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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