IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Cross objection 49 CII of 2016 in/and
FAO 8124 of 2015 (O&M)

Date of decision: 17.07.2018

National Insurance Company Limited .... *Appellant*

Versus

Kulwant Kaur and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. D R Bansal, Advocate
for the appellant

Mr. Dheeraj Mahajan, Advocate
for respondents No. 1 to 3

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Rekha Mittal, J. (Oral)

This order will dispose of aforementioned appeal as well as cross objections as these have emerged out of the same award dated 20.08.2015 passed by the Motor Accidents Claims Tribunal, Gurdaspur whereby compensation has been allowed on account of death of Dilbagh Singh, unmarried son of the claimants, in a motor vehicular accident that took place on 16.06.2012.

The Tribunal has awarded compensation of Rs.11,45,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.5,000.00
Multiplier	17
Addition in income for future prospects	50%
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.10,20,000.00
Funeral expenses	Rs.25,000.00
Loss of love, care and affection	Rs.1,00,000

Deduction for personal expenses allowed by the Tribunal is not in consonance with enunciation laid down by Hon'ble the Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77.*** The Tribunal, despite noticing judgment of Hon'ble the Supreme Court but without assigning any reason to deviate from the principles laid down therein**,** allowed deduction of 1/3rd towards personal expenses**.**

Counsel for the claimants/cross objectors has failed to point out any material justifying deduction of 1/3rd as against 50%, to be allowed in the given circumstances. Accordingly, loss of dependency is to be calculated by allowing deduction of 50%.

The Tribunal has allowed benefit of addition in income for future prospects at the rate of 50% but admissible increase would be 40% in the light of latest judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.*** Multiplier adopted by the Tribunal is correct and affirmed**.**

Counsel for the cross objectors would argue that the Tribunal has assessed income of the deceased at Rs.5,000.00 per month.

As per plea of the claimants, the deceased was a skilled Mechanic of Television, Refrigerator etc. and running his own shop. The Tribunal has noticed in para 13 of the award that no evidence regarding this aspect has been produced by the claimants. Taking a clue from the notification issued by the State of Punjab, fixing minimum wage and available at the relevant time, there is no justification for increase in income of the deceased. In view of the above, loss of dependency is calculated at Rs.7,14,000.00 (Rs.10,20,000 i.e. 5,000x12x17 + Rs.4,08,000.00 (40% addition) – Rs.7,14,000.00 (50% deduction)).

Under conventional heads, compensation awarded by the

Tribunal is modified to the extent of Rs.30,000.00, in the light of judgment of Hon'ble the Supreme Court ***Pranay Sethi's*** case (supra), detailed hereunder:-

Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.7,44,000.00 and compensation awarded by the Tribunal is reduced to the extent of Rs.4,01,000.00 (Rs.11,45,000 – Rs.7,44,000.00). The insurance company shall be entitled to recover the excess amount, if already paid to the claimants, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, cross objections preferred by the claimants fail and are accordingly dismissed.

No order as to costs.

(Rekha Mittal)
Judge

17.07.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No