IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 27.07.2018

FAO No.8518 of 2015 (O&M)

ICICI Lombard General Insurance Co. Ltd. ... Appellant

Versus

Smt. Nirmala Devi and others ... Respondents

FAO No.6220 of 2016 (O&M)

Smt. Nirmala Devi and others ... Appellants

Versus

Jasbir Singh and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : None for the insurance company.

Mr. R.K. Saini, Advocate
for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.8518 of 2015 and 6220 of 2016 as these have emerged out of the same award dated 14.09.2015 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Subhash Chand in a motor vehicular accident that occurred on 16.06.2012 but Subhash Chand succumbed to the injuries on 02.12.2012.

FAO No.8518 of 2015 has been filed by the ICICI Lombard General Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

The Tribunal has awarded compensation of Rs.28,62,295/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5800/-
2. Addition in income for future prospects	50%
3. Multiplier	16
4. Deduction for personal expenses	$1/5^{th}$
5. Loss of dependency	Rs.13,36,320/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.1,00,000/-
8. Medical expenses	Rs.2,00,975/-
9. Loss of consortium	Rs.1,00,000/-
10. Loss of love and affection to sons, widow and parents of the deceased	Rs.11,00,000/-

Counsel for the claimants would urge that as Subhash Chand remained under-treatment in various hospitals from the date of accident on 16.06.2012 till his death on 02.12.2012, claimants are entitled to compensation for transportation, special diet and services of an attendant.

There is no representation on behalf of the insurance company, earlier being represented by a counsel.

The Tribunal has assessed income of the deceased at Rs.5800/- per month on the basis of DC rates for a skilled labour in Haryana. DC rates are payable to employees out of contingency fund. In absence of the claimants adducing clear and cogent evidence with regard to income of the deceased, reference can be made to minimum wage available at the relevant time for computing loss of dependency. Taking into consideration the notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.5000/- per month. Addition in income for future prospects would be @ 40%, in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. The multiplier applied by the Tribunal is correct and affirmed.

The Tribunal has applied deduction to the extent of $1/5^{th}$ for personal expenses of the deceased. The application for compensation has been filed by the widow, four minor children and parents of deceased Subhash Chand. Counsel for the claimants has failed to point out any materials that father of the deceased was dependent on his earning. Under the circumstances, admissible deduction for personal expenses would be $1/4^{th}$. In view of the above, loss of dependency is calculated at Rs.10,08,000/- [(Rs.5000 x 12 x 16) + (40% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-

3. Funeral expenses Rs.15,000/-

Compensation qua medical expenses of Rs.2,00,975/- allowed by the Tribunal is affirmed. There is nothing on record suggestive of the fact that the claimants engaged services of an attendant and suffered financial loss in this regard. However, as the injured remained hospitalised for a period of more than five months, interest of justice would be served, if the claimants are allowed compensation qua transportation expenses and special diet to the extent of Rs.20,000/-. Total compensation is Rs.12,98,975/- and compensation allowed by the Tribunal is reduced to the extent of Rs.15,63,320/- (28,62,295 - 12,98,975).

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal preferred by the claimants stands disposed of. As the appeal (FAO No.6220 of 2016) has been decided on merits, application for condonation of delay is of academic relevance only.

No order as to costs.

(REKHA MITTAL)
JUDGE

27.07.2018
ashok

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