IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1270 of 2018(O&M)

Date of decision: 1.3.2018

United India Insurance Co. Ltd. …..Appellant

VERSUS

Smt. Babli and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 31.10.2017 passed by the Motor Accidents Claims Tribunal, Kaithal (in short 'the Tribunal') whereby compensation has been awarded in regard to death of Sunil Kumar in a motor vehicular accident that took place on 15.03.2016.

Counsel for the insurance company would inform that the appeal has been preferred to assail findings of the Tribunal on two grounds. It is argued that the deceased met with an accident on 15.03.2016 but died on 16.03.2016. The claimants did not produce post-mortem report to establish that injury sustained in the occurrence is the cause of death of Sunil Kumar. In addition, it is argued that in the medico legal report of the victim issued by hospital at Kaithal, there is no reference to any injury on the back/ spinal chord of the deceased whereas dislocation of C4-5 was noticed by the doctors at PGI Chandigarh. Another submission made by counsel is that family members of the deceased took discharge against medical advice as it was advised vide Ex.PW3/A that patient needed inpatient care.

To challenge quantum of compensation assessed by the Tribunal, it is argued that the Tribunal has allowed benefit of increase in income for future prospects at the rate of 50% but the same should be 40%. Compensation under conventional heads to the tune of Rs.3,25,000/- is liable to be restricted to Rs.30,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

I have heard counsel for the appellant, perused the paper-book particularly the award dated 31.10.2017.

So far as plea of the appellant that no injury qua dislocation of C4-5 was noted in his medico legal report issued by the hospital at Kaithal, there is nothing on record suggestive of the fact that there was any external mark of injury on the back of deceased or any tests of back were conducted in the hospital at Kaithal. The patient was shifted to PGI Chandigarh on the date of accident. The Tribunal has noticed that in Ex.PW3/A and so also stated by PW3 that there was quadriplegia with respiratory involvement. No doubt, attendants of the patient left the hospital against medical advice but in view of nature of injuries that caused quadriplegia with respiratory involvement resulting in death of the injured on 16.03.2016 and in absence of there being any material on record that there were other intervening factors leading to death of the deceased, it is difficult to accept contention of the insurance company that the claimants have failed to prove nexus between the injuries and death of Sunil Kumar. In this view of the matter, contention raised by the appellant that the deceased did not die due to sustaining of injuries in the accident is misconceived and liable to be rejected.

This brings the Court to quantum of compensation assessed by the Tribunal. The Tribunal has awarded Rs.15,64,300/- detailed hereunder:-

Monthly income of the deceased	Rs.7650/-
Addition qua future prospects	50%
Deduction for personal expenses	50%
Multiplier	18
Loss of dependency	Rs.12,39,300/-
Loss of estate	Rs.1,00,000/-
Loss of expectation of life of deceased	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-

Perusal of the award makes it evident that the Tribunal assessed income of the deceased by taking him as an unskilled labour and relying upon minimum wage fixed by the State of Haryana. The occurrence in question took place in March 2016. The minimum wage of an unskilled worker at the relevant time was Rs.7976.20 and accordingly income of the deceased is assessed at Rs.8,000/- per month. The Tribunal has rightly applied deduction of 50% but benefit of future prospects would be available at the rate of 40%. The multiplier adopted by the Tribunal is liable to be affirmed in the light of judgments referred to in the award. In this manner, loss of dependency comes to Rs.12,09,600/- [Rs.17,28,000/- (Rs.8000/- x 12 x 18) + Rs.6,91,200/- (40% towards future prospects) – Rs.12,09,600/- (50% deduction towards personal expenses)].

Under conventional heads, compensation payable to the claimants is restricted to Rs.30,000/- in the light of judgment in **Pranay Sethi and others case** (supra) detailed hereunder:-

Expenses on funeral	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.12,39,600/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,24,700/- (Rs.15,64,300/- - Rs.12,39,600/-).

The plea of the appellant that the Tribunal has allowed interest at a higher rate i.e. 9% per annum is not meritorious when the case is examined in the light of judgment of Hon'ble the Supreme Court **Shri Nagar Mal and others Vs. The Oriental Insurance Company Ltd. and others, Civil Appeal No.448 of 2018 decided on 19.01.2018**.

The appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention here that compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of the appeal filed by the insurance company would not cause prejudice to them.

MARCH 1, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no