IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.1379 of 2018 (O&M)
Date of Decision: March 14, 2018.

Oriental Insurance Company Limited

..........APPELLANT(s).

VERSUS

Smt. Palo Bai and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Gupta, Advocate
for the appellant (s).

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SURINDER GUPTA, J.

This is appeal by Oriental Insurance Company Limited, insurer of the offending vehicle (Bus bearing registration No.HR-46D-1366) against the award dated 14.11.2017 passed by Motor Accident Claims Tribunal, Fatehabad awarding compensation of ₹12,39,600/- to the claimants-respondents No.1 and 2 for death of their son Raman Kumar (later referred to as 'the deceased') in a motor vehicle accident.

Learned counsel for the appellant has assailed the award on two counts; firstly that the addition of 40% in the income of the deceased awarded towards his future prospects is not admissible; and secondly that the multiplier is to be applied as per the age of the claimants and not as per age of the deceased, who was unmarried. He has argued that Hon'ble Apex Court in ***SLP (Civil) No.34237/2016*** has observed that the matter on the issue whether the age of deceased or the age of legal heirs is to be taken into account for arriving at proper multiplier is pending consideration in ***SLP(C) No...../2017 (CC No.7577 of 2017)***. In view of the same, the calculation of compensation for loss of dependancy as per age of the deceased is not justified.

In case of ***National Insurance Company Limited Vs. Pranay Sethi and others, 2017 (4) R.C.R. (Civil) 1009***, a Constitution Bench of Hon'ble Apex Court after analysing the law on the point has recorded following conclusions:-

> "61. In view of the aforesaid analysis, we proceed to record our conclusions:-
>
> (i) The two-Judge Bench in ***Santosh Devi*** should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in ***Sarla Verma***, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.
>
> (ii) As ***Rajesh*** has not taken note of the decision in ***Reshma Kumari***, which was delivered at earlier point of time, the decision in ***Rajesh*** is not a binding precedent.
>
> (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be

> regarded as the necessary method of computation. The established income means the income minus the tax component.
>
> (v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of ***Sarla Verma*** which we have reproduced hereinbefore.
>
> (vi) The selection of multiplier shall be as indicated in the Table in ***Sarla Verma*** read with paragraph 42 of that judgment.
>
> (vii) The age of the deceased should be the basis for applying the multiplier.
>
> (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

As per para (iv) above, where the deceased less than 40 years of age, was self-employed or on a fixed salary, addition of 40% on the stablished income is to be allowed. As per para 61 (vii) above, the age of the deceased should be the basis for applying multiplier.

In view of the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra), submissions of learned counsel for the appellant have no merits and are rejected.

No other point has been argued.

Dismissed.

(SURINDER GUPTA)
JUDGE

March 14, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No