

In the High Court of Punjab and Haryana at Chandigarh

FAO- 2421 of 2018(O&M)
Date of Decision:3.5.2018

The Oriental Insurance Company Limited

---Appellant

vs.

Vijma and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.R.K.Bashamboo, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against award dated 6.2.2018 passed by the Motor Accidents Claims Tribunal, Ambala (in short “the Tribunal”) whereby compensation has been awarded on account of death of Ram Ashish Yadav in a motor vehicular accident that took place on 6.2.2016.

The Tribunal has assessed compensation of Rs. 12,79,780/-, detailed hereunder:-

Monthly income of the deceased	Rs. 9400/-
Addition for future prospects	10%
Deduction for personal expenses	1/4 th
Multiplier	13
Loss of dependency	Rs. 12,09,780/-

In addition, a sum of Rs. 70,000/- has been allowed under

conventional heads in the light of judgment of Hon'ble the Supreme Court
**National Insurance Company Limited vs. Pranay Sethi and others 2017
SCC 1270.**

Counsel for the insurance company would inform that the appeal has been preferred only to assail quantum of compensation assessed by the Tribunal. For this purpose, counsel has two fold submissions to make. It is argued that the Tribunal has assessed income of the deceased at Rs. 9400/- per month on the basis of minimum wage fixed by the Deputy Commissioner, Ambala for the relevant period as against minimum wage fixed by the State of Haryana in the Department of Labour which was Rs. 8070.44/- for an unskilled labour. Another submission made by counsel is that application for compensation was filed by the widow and three major sons aged 27, 25 and 23 years but the Tribunal has wrongly applied cut of 1/4th for personal expenses of the deceased. It is argued that major sons of the deceased cannot be said to be dependent upon his earnings.

I have heard counsel for the appellant and perused the paper book particularly the award.

The plea of the claimants is that Ram Ashish was 48 years old, plied a rickshaw and earned Rs. 20,000/- per month. They could not adduce clear evidence with regard to earnings of the deceased. However, Deputy Commissioner's rates are available to be paid to the employees out of contingency. In absence of evidence with regard to income of the deceased, the Tribunal can get a clue from the minimum wage available at the relevant time. There is no bar against assessment of income more than minimum wage, in the light of facts and circumstances obtaining in a case. Taking a clue from the notification issued by the State of Haryana fixing minimum wage available at the relevant time coupled with that the deceased was rickshaw puller, income of the deceased is assessed at Rs. 8500/- per month being a semi skilled labour.

So far as plea of the insurance company that the Tribunal has

wrongly applied deduction to the extent of 1/4th, counsel has failed to point out any materials on record that sons of the deceased are gainfully employed or they were not getting any financial assistance from their father. Examined from another angle, they would certainly be entitled to benefit of loss to estate at a higher rate. Accordingly, findings of the Tribunal to allow deduction to the extent of 1/4th cannot be faulted with.

The Tribunal has applied multiplier of 13 available for the age bracket 46-50 in the light of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another 2009 (3)RCR (Civil) 77**. The Tribunal in para 18 of the award has dilated on the issue of age of the deceased. A relevant extract therefrom, reads as follows:-

“The first thing to be determined is the age of deceased Ram Ashish Yadav. As per the claim petition, he was 48 years old at the time of his death. The postmortem report Ex. P3 mentions his age 46 years. PW1 Vijma also stated that the age of Ram Ashish Yadav was 48 years. In the cross-examination, she stated that she got married to Ram Ashish Yadav about 29 years ago and she was 18 years old at the time of her marriage. There is no other evidence with regard to the age of deceased.”

Counsel for the appellant would inform that in the cross examination of Vijma widow of the deceased, she has deposed that the deceased was 2/3 years older than her. Vijma has stated that she was 47 years old. In the postmortem report, age of the deceased is 46 years. The claimants have raised the plea that the deceased was 48 years old. Provisions dealing with grant of compensation are benevolent social legislation to make good the loss the victim family has suffered on account of death of their dear one in a motor vehicular accident. The deceased has left behind family consisting of his widow and three grown up sons. There is

nothing on record suggestive of the fact that the family had any other source of income. Taking into account the legislative intent behind Section 166 of the Motor Vehicles Act, 1988 coupled with materials on record, in the interest of justice, it is to be held that the deceased was less than 50 years of age. As such, claimants shall be entitled to benefit of increase in income for future prospects @ 25%. In this manner, loss of dependency comes to Rs. 12,43,125/- [8500 x 12 x 13 = 13,26,000 + 3,31,500 (25%) = 16,57,500 - 4,14,375 (1/4th)].

Compensation awarded under conventional heads is affirmed.

Total compensation is Rs. 13,13,125/- (12,43,125 + 70,000). Compensation awarded by the Tribunal is enhanced to Rs. 33,345/- (13,13,125 - 12,79,780), payable with interest at the rate allowed by the Tribunal from the date of petition till realization.

For the foregoing reasons, the appeal stands disposed of. A copy of the judgment be sent to the claimants to enable them to seek recovery of additional amount allowed by this Court.

Before parting with this order, it is pertinent to mention that though the claimants have been awarded additional amount of Rs. 33,345/- along with interest but income of the deceased has been reduced without notice to them. The claimants would be at liberty to file an application before this Court if they have any grievance to express. It is further clarified that any observations made hereinbefore shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

(Rekha Mittal)
Judge

3.5.2018

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