In the High Court of Punjab and Haryana at Chandigarh

FAO No. 2422 of 2018 (O&M)
Date of Decision: 29.5.2018

The New India Assurance Company Limited

---Appellant

versus

Shrichand and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Lalit Garg, Advocate
for the appellant

***

Rekha Mittal, J.

CM No. 10741-CII of 2018

Heard.

Allowed as prayed for. Annexures A/1 to A/3 are taken on record subject to just exceptions.

Disposed of accordingly.

FAO No. 2422 of 2018

The present appeal directs challenge against award dated 12.12.2017 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short "The Tribunal") whereby compensation has been awarded on account of death of Harish in a motor vehicular accident that took place on 7.4.2016 at village Libra, G.T.Road, P.S.Sadar Khanna.

Counsel for the appellant would inform that the appeal has been filed to assail quantum of compensation assessed by the Tribunal. To bring home his contention, counsel has two fold submissions to make. It is argued that the Tribunal has assessed income of the deceased at Rs. 14,000/- per month on the basis of testimony of Vijay Kumar Ghai but the said witness did not produce his income tax returns to prove if salary @ Rs. 14,000/- per month, reflected in certificate Annexure A-3 is recorded therein. In addition, it is argued that in one of the documents Ex. P2, salary of the deceased has been reflected @ Rs. 7,000/- per month but in the later documents, the same is recorded to be Rs. 14,000/- per month. Salary @ Rs. 14,000/- is shown to be paid for the months of February and March 2016 only. According to counsel, other employees working in Mitter Vegetarian Hotel situated at Samrala road, Khanna are being paid salary @ Rs. 4500 to 6800/- per month, therefore, income of the deceased has been shown at a higher rate with a clear intent to support cause of the claimants.

Another submission made by counsel is that the Tribunal has allowed benefit of increase in income @ 50% as against 40% permissible in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. Deduction for personal expenses should be 50% as against $1/3^{rd}$ 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.** Compensation allowed under conventional heads needs to be restricted to Rs. 30,000/- as the deceased was unmarried son of the claimants.

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

Plea of the insurance company that the Tribunal has wrongly assessed income of the deceased at Rs. 14,000/- per month is not meritorious and liable to be rejected. Vijay Kumar Ghai, owner of Mitter Vegetarian Hotel appeared in the witness box and produced number of documents maintained by his business concern. He produced the account books i.e. Cash book, ledger and also the balance sheet. As per cash book, deceased was paid salary @ 7000/- per month for January 2016 for the period from 15.1.2016 to 31.1.2016 meaning thereby that salary of Rs. 7000/- is only for a period of 15 days. Counsel for the insurance company has failed to point out any materials brought forth in cross examination of Vijay Kumar Ghai to discard or disbelieve his testimony or to record a finding that the documents proved by him were created only to support cause of the claimants. Even otherwise, there is nothing on record suggestive of the fact that Vijay Kumar Ghai had any connection with family of the deceased much less his being a beneficiary in the claim. In this view of the matter, I find myself unable to accept contention of the appellant that income of the deceased assessed by the Tribunal is on higher side and needs reduction.

The Tribunal has allowed benefit of future prospects @

50% but the same would be 40% in the light of judgment in **Pranay Sethi and others' case (supra)** The Tribunal, despite taking note of judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others's case (supra)** has erred by allowing deduction for personal expenses to the tune of 1/3rd in place of 50% as application for compensation has been filed by parents of deceased Harish. By allowing benefit of future prospects @ 40% and deduction for personal expenses to the tune of 50%,. loss of dependency is computed at Rs. 21,16,800/- [14000 x12 x 18=30,24,000 + 12,09,600(40%)= 42,33,600 -21,16,800(1/2)].

Under conventional heads, the Tribunal has awarded a sum of Rs. 70,000/-. The Tribunal without appreciating that the claimant was unmarried allowed loss of consortium to the tune of Rs. 40,000/-. The Tribunal needs to understand that loss of consortium is available only to widow of a deceased person. Compensation allowed for loss of consortium is accordingly set aside.

Total compensation is Rs. 21,46,800/-. Compensation awarded by the Tribunal is reduced to the extent of Rs.9,47,200/- (30,94,000-21,46,800).

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation has been reduced without notice to the claimants. 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

29.5.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No