**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.2826 of 2018(O&M)

Date of decision: 24.5.2018

Bajaj Allianz General Insurance Co. Ltd. …..Appellant

VERSUS

Anita and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 15.03.2018 passed by Motor Accidents Claims Tribunal, S.B.S. Nagar (in short 'the Tribunal') whereby compensation has been awarded on account of death of Sanjeev Kumar in a motor vehicular accident that took place on 09.01.2017.

The Tribunal has awarded compensation of Rs.50,58,704/- (rounded off to Rs.50,59,000/-) detailed hereunder:-

Annual income of the deceased	Rs.4,71,208/-
Income Tax	Rs.6422/-
Net income for computing loss of dependency	Rs.4,64,786/-
Addition for future prospects	15%
Deduction for personal expenses	1/3rd
Multiplier	14
Loss of dependency	Rs.49,88,704/-

Conventional heads Rs.70,000/-

Counsel for the insurance company would inform that appeal has been preferred to assail quantum of compensation assessed by the Tribunal. It is argued that the Tribunal has assessed income of the deceased on the basis of income tax return for the assessment year 2016-17 pertaining to financial year 2015-16. In the return appended as Annexure A-1, income of Rs.1,80,000/- has been shown qua profits under Section 44AD on sale of medicines i.e. profit deemed under Section 44AD @ 8% of Rs.9,00,000/- = Rs.72,000/-, profit declared under Section 44AD @ 20% of Rs.9,00,000/- = Rs.1,80,000/-, Profit (higher of the above) Rs.1,80,000/-. There is also reference to income from other sources namely bank and post office interest Rs.22,000/-, interest on NSE Rs.5208/-, total Rs.27,208/-. In addition to this income, the deceased had show income of Rs.2,64,000/- towards salaries. It is argued that only income qua salary is required to be taken into account for computing loss of dependency as the other two incomes would be available to family of deceased after his death. Counsel has also made reference to Section 44AD of the Income Tax Act, 1961 that deals with special provision for computing profits and gains of business on presumptive basis.

Counsel for the appellant, in response to a query, is not in a position to point out any materials on record that business of sale of medicines by the deceased has been taken over by one of the claimants/dependent upon earning of the deceased. The income from business cannot be ignored for computing loss of dependency. Under the circumstances, the Tribunal has rightly taken into consideration profit from business to the tune of Rs.1,80,000/- per annum. However, interest income from bank, post office and on NSE shall be available to family of the deceased and accordingly, income of Rs.27,208/- towards interest cannot be taken into account for computing loss of dependency. After deducting annual income of Rs.27,208/- and affirming deduction for personal expenses and multiplier adopted by the Tribunal, loss of dependency comes to Rs.46,96,671/- [Rs.61,26,092/- (Rs.4,37,578/- x 14) + Rs.9,18,914/- (15% addition) - Rs.23,48,335/-/- (1/3rd deduction)]. After addition of Rs.70,000/- allowed towards conventional heads, total compensation is Rs.47,66,671/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,92,329/- (Rs.50,59,000/- - Rs.47,66,671/-).

No other point has been raised.

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

Before parting with this order, it is pertinent to mention here that amount of 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 their rights.

MAY 24, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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