IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 2913 of 2018 (O&M)
Date of decision: 31.05.2018

The New India Assurance Company Limited ....*Appellant*

Versus

Kulwinder Kaur and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Neeraj Khanna, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 11148 CII of 2018

Prayer in this application is for condonation of delay of 48 days in re-filing the appeal.

In view of averments made in the application supported by an affidavit of Shri Neeraj Khanna, Advocate and arguments advanced, the application is allowed and delay of 48 days in re-filing the appeal stands condoned.

Main case

The present appeal directs challenge against award dated 05.12.2017 passed by the Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal') whereby compensation has been awarded on account of death of Sukhwinder Singh alias Lovely aged 19 years in a motor vehicular accident that took place on 09.10.2015.

Counsel for the appellant - insurance company would inform that the appeal has been filed only to assail quantum of compensation assessed by the Tribunal. To bring home his contention, it is argued that the Tribunal has allowed deduction for personal expenses to the tune of 1/5th in a case where in application for compensation has been filed by parents and sister of deceased but admissible deduction in the light of judgment of Hon'ble the Supreme Court ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77,*** should be 50%. Compensation allowed under conventional heads needs to be restricted to Rs.30,000.00 i.e. Rs.15,000.00 for loss of estate and Rs.15,000.00 for funeral expenses.

Perusal of the award would reveal that the Tribunal has assessed income of deceased at Rs.6,646.75 on the basis of notification No. 25228-373 dated 22.10.2014. The accident in question took place in October 2015, therefore, notification in force at that time is to be taken into consideration for assessing income of the deceased. As per notification, dated 26.05.2015, minimum wage of unskilled worker with effect from 01.09.2015 is Rs.6,935.62 per month. Accordingly, income of deceased is assessed at Rs.7,000.00 per month.

The Tribunal in para 23 of the award has held that "the deceased must have incurred expenditure of personal and living expenses which as per the law laid down by Hon'ble Supreme Court in *Smt. Sarla Verma and others vs Delhi Transport Corporation and another, 2009(6) SCC 121*, 1/5th of the same is to be deducted as personal and living expenses. Therefore, the multiplicand comes to Rs.89,332.00." The Tribunal despite noticing judgment in *Sarla Verma's* case (supra) has seriously faulted in allowing deduction to the extent of 1/5th though the application for compensation has been filed by the parents and sister of the deceased. There is nothing on record suggestive of the fact that during life time of Gurmit Singh, father of the deceased, Prabhjot can be said to be dependent upon earning of the deceased aged about 19 years. Even otherwise, in view of enunciation laid down in *Sarla Verma's* case (supra), deduction of 1/3rd for personal expenses of unmarried person can be allowed if the deceased had a widowed mother and large number of dependent brothers and sisters. In the case at hand, there is no justification for deviation from the formula laid down in Sarla Verma's case (supra) much less to allow deduction of 1/5th. Accordingly, deduction of 50% is to be applied qua personal and living expenses of the deceased. Multiplier of 18 and benefit of increase in income for future prospects at the rate of 40% allowed by the Tribunal are affirmed. In this view of the matter, loss of dependency is calculated at Rs.10,58,400.00 (Rs.15,12,000.00 *i.e.* 7,000 x 12 x 18 + Rs.6,04,800 (40% future prospects) – Rs.10,58,400.00 (50% deduction))

Under conventional heads, the Tribunal has allowed a sum of Rs.40,000.00 for loss of consortium. The Tribunal has not borthered to know that loss of consortium is to be paid to a widow. The claimants shall be entitled to Rs.30,000.00 under conventional heads, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation is **Rs.10,88,400.00** (Rs.10,58,400.00 +

30,000.00) and compensation awarded by the Tribunal is reduced to the extent of **Rs.5,89,576.00** (Rs.16,77,976.00 – Rs.10,88,400.00).

The Tribunal has awarded interest at the rate of 6% per annum from the date of petition till realization only if the insurance company fails to deposit compensation within three months. The Tribunal has not assigned any reason to deny *pendente lite* interest to the claimants or giving a concession to the insurance company to escape its liability to pay interest in case compensation is deposited within three months. The claimants shall be entitled to interest at the rate of 7.5% per annum from the date of petition till realization on the amount found payable, in view of discussion made hereinbefore.

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

Before parting with the order, it is clarified that the instant appeal has been disposed of without notice to the claimants to avoid inconvenience and incurring expenditure by them. However, if they have any grievance to express, they shall be at liberty to file an appropriate application before this Court. Any observation made hereinabove shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

Copy of the order be sent to the claimants for necessary information.

(Rekha Mittal)
Judge

31.05.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No