In the High Court of Punjab and Haryana at Chandigarh

FAO No. 316 of 2018(O&M)
Date of Decision:19.1.2018

National Insurance Company Limited

---Appellant

vs.

Amrita Khatri and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

***

Present: Mr. Sandeep Suri, Advocate
for the appellant

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Rekha Mittal, J.

CM No. 1087-CII of 2018

Prayer in this application is for condoning delay of 07 days in filing the appeal.

Allowed as prayed for. Delay of 07 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO- 316 of 2018

The present appeal directs challenge against award dated 3.10.2017 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been awarded in regard to death of Manbahadur Khatri in a motor vehicular accident that took place on 6.10.2016.

The Tribunal has awarded compensation to the tune of

Rs. 18,45,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 8000/-
Increase in income for future prospects	50%
Multiplier	15
Deduction for personal expenses	1/4th
Loss of dependency	9000x12x15=Rs.16,20,000/-
Expenses on funeral	Rs. 25,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection to children	Rs. 1,00,000/-

Counsel for the appellant would submit that appeal has been preferred to assail quantum of compensation assessed by the Tribunal. It is argued that as the deceased did not have established income, the Tribunal has wrongly allowed benefit of increase in income for future prospects and that too @ 50% which is not in consonance with latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270.** Compensation under conventional heads is liable to be restricted to Rs. 70,000/- in view of the aforesaid judgment.

The Tribunal has assessed income of the deceased at Rs. 8000/- per month. Plea of the claimants is that the deceased was a cook by profession working at different 'dhabas'. As widow of the deceased could not tell the name of 'dhabas' where her husband was working, the Tribunal refused to accept plea of the claimants with regard to avocation and income of the deceased. It can be possible that the widow may not be knowing the name of dhabas where the deceased was working. In such like cases, it is difficult to expect from the family to produce sufficient evidence to establish income of the deceased. However, it remains a fact that the deceased left behind a family consisting of his widow and three minor children aged 11, 8 and 1 year. Taking into consideration the minimum wage of a semi skilled worker, income of the deceased is assessed at Rs.8800/-. As has been noticed that the deceased had a large family to look after, it is difficult to accept that he would have stagnated at income of Rs. 8800/- had he remained alive. Under the circumstances, it would be travesty of justice in case the claimants are denied benefit of increase in income for future prospects @40%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 8800 X 12 X 15= 15,84,000 + 6,33,600 (40%) =22,17,600 –5,54,400 (1/4th)=Rs. 16,63,200/-.

Under conventional heads, claimants shall be entitled to following compensation in view of **Pranay Sethi's case (supra)**:-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation comes to Rs.17,33,200/- and compensation is reduced to the extent of **Rs. 1,11,800/-**(18,45,000-17,33,200).

The appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that as compensation awarded by the Tribunal has been reduced, 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 file an appeal for enhancement.

(Rekha Mittal)
Judge

19.1.2018
paramjit

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