In the High Court of Punjab and Haryana at Chandigarh

FAO- 48 of 2018(O&M)
Date of Decision: 10.1.2018

National Insurance Company Limited

---Appellant

versus

Reena and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Harjinder Singh, Advocate
for the appellant

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<u>Rekha Mittal, J.</u>

The present appeal directs challenge against award dated 5.9.2017 passed by the Motor Accidents Claims Tribunal, Amritsar (in short "the Tribunal") whereby compensation has been assessed in regard to death of Peter Masih in a motor vehicular accident that took place on 24.2.2016.

The Tribunal has awarded compensation to the tune of Rs. 31,28, 944/- represented in a tabulated form in para 17 of the award.

Counsel for the appellant has assailed quantum of compensation on two counts. The first submission made by counsel is that income of the deceased assessed by the Tribunal is on higher side. The Tribunal has allowed benefit of increase in income for future prospects at the rate of 30% but the same should be 25% in the light of latest judgment of Hon'ble the Supreme Court of India **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**. Compensation awarded under conventional heads needs reduction in the light of aforesaid judgment. The last submission made by counsel is that the Tribunal has allowed interest at the rate of 9% per annum but the same should be 7/7.5% per annum on the basis of interest allowed by the nationalized banks on fixed deposits. For this purpose, he has referred to judgment of Hon'ble the Supreme Court **S. Kaushnuma Begum and others vs. New India Assurance Company Limited and others 2001(1) RCR (Civil) 559.**

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

The Tribunal, in para 12 of the award, has taken note of evidence adduced by the claimants to establish income of the deceased. The deceased filed income tax return Ex. P5 wherein his income has been reflected to the tune of Rs. 2,18,970/-. Counsel for the insurance company would inform that the said income tax return was filed by the deceased himself for the assessment year 2014-15. The claimants examined an official from the income tax department to prove the income tax return. In the circumstances, assessment of income on the basis of income tax return (Ex. P5) cannot be faulted with.

The Tribunal has allowed benefit of increase in income for future prospects @ 30%. However, the said benefit would be @ 25% in the light of enunciation laid down by Hon'ble the Supreme Court in **Pranay Sethi's case (supra)**. Similarly, claimants shall be entitled to compensation of Rs. 70,000/- under conventional heads, detailed hereunder:-

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

In view of the above, loss of dependency comes to Rs. 2,18,970 x 14 = 30,65,580 + 7,66,395 (25%)=38,31,975 - 9,57,994 (1/4th) = **Rs. 28,73,981/-**. The total compensation comes to Rs. 29,43,981/-(28,73,981 + 70,000) and the compensation awarded by the Tribunal is reduced to the extent of Rs.1,84,963/- (31,28,944 – 29,43,981).

So far as plea of the appellant with regard to grant of interest, the Tribunal has awarded interest at the rate of 9% per annum. Counsel for the appellant has not placed on record any document with regard to rate of interest on fixed deposits payable by the nationalized banks as on date. That being so, he cannot derive any advantage from the referred authority seeking reduction of rate of interest.

For the foregoing reasons, the appeal is partly allowed. Compensation awarded by the Tribunal is reduced to the extent of **Rs.1,84,963/-**.

Before parting with this order, it is pertinent to mention that the appeal has been partly allowed without notice to the claimants in order to save them from unnecessary inconvenience and expense. However, the claimants shall be at liberty to file an appropriate application before this Court in case they have any grievance to express. It is further clarified that in case the claimants file appeal for enhancement of compensation, any observations made hereinbefore for disposal of appeal filed by the insurance company will not cause prejudice to their right for decision of the appeal on merits.

(Rekha Mittal)
Judge

10.1.2018
PARAMJIT Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No