IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4920 of 2018(O&M)

Date of decision: 7.8.2018

The New India Assurance Co. Ltd. Co. …..Appellant

VERSUS

Bibi Tajpuriya and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 16.04.2018 passed by Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been assessed on account of death of Padamraj Tajpuria @ Padam Bahadur Tajpuria in a motor vehicular accident that took place on 26.09.2015.

The Tribunal has assessed compensation of Rs.17,32,600/- detailed hereunder:-

Monthly income of the deceased	Rs.8000/-
Multiplier	16
Deduction for personal expenses	1/4th
Addition for future prospects	30%
Loss of dependency	Rs.14,97,000/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss to estate	Rs.10000/-

Loss of consortium Rs.1,00,000/-

Counsel for the appellant has assailed the award primarily on two counts. It is argued that Tribunal has assessed income of the deceased at Rs.8000/- per month but minimum wage of an unskilled worker at the relevant time was approximately Rs.7000/- per month. Compensation allowed under conventional heads needs to be restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

Another submission made by counsel is that as the vehicle was not registered on the day of occurrence, the insurance company is not liable to pay compensation.

At the outset, it is pertinent to mention that the Tribunal has passed the award without caring for the latest judgment of Hon'ble the Supreme Court **Pranay Sethi and others case (supra)** while allowing benefit of future prospects at the rate of 30% as against 40% admissible in the circumstances and compensation to the tune of Rs.2,35,000/- under conventional heads as against Rs.70,000/- admissible in the light of aforesaid judgment of Hon'ble the Supreme Court.

The Tribunal has assessed income of the deceased at Rs.8000/- per month by treating him as an unskilled labour and in view of the minimum wage standard in the year 2015. The plea of the claimants is that deceased was working as a helper at Vimal Alloys Pvt. Ltd. village Saunti at a salary of Rs.12000/- per month. In para 25 of the award, it has been noticed by the Tribunal that claimants failed to substantiate their plea in this regard. There is no evidence to prove that any firm or concern in the name of Vimal Alloys Pvt. Ltd. village Saunti is in existence much less the deceased was employed there. The Tribunal did not bother to examine the relevant notification issued by the State of Punjab fixing minimum wage available at the relevant time. Taking into consideration the minimum wage available at the relevant time coupled with inability of claimants to produce any satisfactory much less cogent evidence on record that income of the deceased was more than the minimum wage fixed by the Government, income of the deceased is liable to be assessed at Rs.7000/- per month. The claimants shall be entitled to benefit of addition in income for future prospects at the rate of 40%. Deduction for personal expenses and multiplier allowed by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,11,200/- [Rs.13,44,000/- (Rs.7000 x 12x 16) + Rs.5,37,600/- (40% future prospects) – Rs.4,70,400/- (1/4th deduction towards personal expenses).

The claimants shall be entitled to following compensation under conventional heads in the light of latest judgment of Hon'ble the Supreme Court **Pranay Sethi and others case (supra)**:-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.14,81,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs.2,51,400/- (Rs.17,32,600/- - Rs.14,81,200/-) .

The plea of the insurer that the company is not liable to pay compensation for want of registration of the vehicle at the relevant time is highly misconceived and liable to be rejected. The defences available to the insurance company are prescribed in Section 149(2) of the Motor Vehicles Act, 1988 (in short 'the Act'). On a pointed query, counsel for the insurance company is not in a position to contend that any such defence of non-registration of the vehicle is available to the insurer under Section 149(2) of the Act. That being so, the insurance company cannot escape its liability to pay compensation to the claimants by way of indemnification of the insured under the policy of insurance.

Counsel would urge that Tribunal has awarded interest at the rate of 9% per annum with a default stipulation that in case the award is not complied within 30 days, interest at the rate of 12% per annum shall be payable. Findings of the Tribunal imposing penal interest at the rate of 12% per annum cannot be allowed to sustain when the case is examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur, 2004 ACJ 648.**

For the foregoing reasons, the appeal is partly allowed. Compensation payable to the claimants shall carry interest at the rate of 9% per annum from the date of petition till realisation.

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 insurer would not cause prejudice to their rights.

Copy of the award be sent to the concerned Presiding Officer for guidance in future.

AUGUST 7, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**
Whether speaking/reasoned : yes/no

Whether reportable : yes/no