IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 8725 of 2017(O&M)

Date of decision: 8.1.2018

United India Insurance Co. Ltd. …..Appellant

VERSUS

Jasbir Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vinod Gupta, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

CM No.28236-CII of 2017

Prayer in this application is for condoning delay of 112 days in re-filing the appeal.

Heard.

In view of averments made in the application, application is allowed. Delay of 112 days in re-filing the appeal stands condoned.

Disposed of accordingly.

CM No.28237-CII of 2017

Prayer in this application is for condoning delay of 5 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Ravinder Singh, A.O. United India Insurance Co. Ltd., the application is allowed. Delay of 5 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.8725 of 2017

The present appeal directs challenge against award dated 07.04.2017 passed by the Motor Accidents Claims Tribunal, Kapurthala (in short 'the Tribunal') whereby compensation has been assessed in regard to death of Narinder Pal Singh Chhabra @ Prince in a motor vehicular accident that took place on 24.01.2016.

The Tribunal has awarded compensation to the tune of Rs.21,25,000/- payable with interest at the rate of 7% per annum from the date of petition till realization.

Counsel for the appellant-Insurance Company would inform that the appeal has been preferred to assail findings of the Tribunal qua quantum of compensation as well as the issue of driving licence. To challenge correctness of compensation assessed by the Tribunal, counsel has three-fold submissions to make. The first submission made by counsel is that the Tribunal has assessed income of the deceased at Rs.10,000/- per month but the claimants failed to adduce satisfactory much less convincing evidence with regard to income of the deceased from business of sale of dairy products. The Tribunal has allowed increase in income for future prospects to the extent of 50% and the same, at best, can be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.** Compensation allowed under conventional heads needs reduction in the light of judgment in **Pranay Sethi and others case** (supra).

Another submission made by counsel is that as driver of offending vehicle i.e. truck No.PB-09-3110 was not possessing a valid licence, the insurance company is entitled to be exonerated of its liability or in the alternative right of recovery against the insured.

I have heard counsel for the appellant, perused the paper-book particularly the award dated 07.04.2017.

To establish income of the deceased, Jasbir Kaur, one of the claimants, appeared in the witness-box and reiterated their version that deceased was doing the work of milk trading and used to purchase milk from K.F. Foods Pvt. Ltd, village Pattar Kalan, District Jalandhar. The claimants examined Retesh Kumar AW-3 from K.F. Foods Pvt. Ltd. who produced documents with regard to purchases made by the deceased. Taking into consideration the evidence on record, no fault can be found in findings of the Tribunal assessing income of the deceased at Rs.10,000/- per month when otherwise the minimum wage at the relevant time was approximately Rs.7600/- per month. In this view of the matter, findings of the Tribunal qua income of the deceased are liable to be affirmed and ordered accordingly.

The Tribunal has allowed increase in income for future prospects to the extent of 50%. In the light of judgment relied upon by counsel for the appellant, admissible increase would be 40%. In this manner, loss of dependency comes to Rs.16,80,000/- [Rs.1,80,0000/- (Rs.10,000/- x 12 x 15) + Rs.7,20,000/- (40% towards future prospects) – Rs.8,40,000/- (1/3rd towards personal expenses)].

The claimants shall be entitled to following compensation under conventional heads in the light of judgment in **Pranay Sethi's case** (supra):-

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

In view of the above, total compensation comes to Rs.17,50,000/-, therefore, compensation assessed by the Tribunal is reduced to the extent of Rs.3,75,000/- (Rs.21,25,000/- - Rs.17,50,000/-).

So far as plea of the insurance company that driver was not possessing a valid licence, perusal of the verification report Ex.RY, copy whereof was made available by counsel during the course of hearing, it is evident that the driver was possessing a licence for Transport/LMV CAB PSV BUS valid upto 13.08.2017. That being so, the Tribunal has rightly held that driver was competent to drive the vehicle in question on the basis of licence possessed by him.

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 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 application before this Court in case they have any grievance to express. Any observations made hereinbefore for disposal of appeal by the insurance company would not cause prejudice to the claimants in case they file an appeal for enhancement of compensation.

JANUARY 8, 2018 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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