IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.642 of 2018 (O&M)
Date of Decision.14.09.2018

New India Assurance Co. Ltd. ......Appellant

Vs

Inderjit Kaur @ Baljit Kaur and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Kundra, Advocate
for the appellant.

Mr. Anupam Singla, Advocate
for respondent Nos.1 to 4.

-.-

AMIT RAWAL J. (ORAL)

The insurance company is in appeal against the award passed by the Tribunal on the ground of quantum and liability.

The award arose out of accident occurred on 19.11.2015 with a truck bearing No.HR-38G-8033, which struck against the motor cycle of deceased Jaswinder Singh. The deceased was an agriculturist besides used to sell milk and stated to be earning ₹ 7 lacs per annum. The claimants were widow, two minor children and father.

The Tribunal while assessing the compensation valued the managerial skills of the deceased to the tune of ₹ 11,400/- per month i.e. ₹ 1200/- per acre for 20 acres of land and adopted multiplier of 16. It provided ₹ 1 lac each to the widow and minor children & father for loss of consortium and loss of love and affection respectively and ₹ 10,000/- for funeral expenses. In total, a compensation of ₹ 25,98,000/- has been awarded.

Mr. Amit Kundra, learned counsel appearing on behalf of the appellant submitted that there is no loss of income as the deceased had left behind the estate, out of which income can always be generated by selling crops. Moreover, the Tribunal has wrongly awarded conventional heads of claim to the tune of ₹1 lakh each to the widow, minor children and father for loss of consortium and loss of love and affection whereas it ought to have been provided as ₹70,000/- in view of ratio decidendi culled out by Hon'ble Supreme Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 13 SCALE 12***.

As regards liability, he submitted that the owner of the vehicle had not been able to produce on record the documents i.e. driving licence, route permit etc. as sought by the insurance company, therefore, the liability to satisfy the award ought to have been fastened upon the owner and driver of the offending vehicle by completely absolving insurance company, thus, urges this Court for setting aside the award under challenge.

Mr. Anupam Singla, learned counsel appearing on behalf of the claimants-respondent Nos.1 to 4 submitted that the Tribunal has rightly assessed the compensation. In fact, Tribunal has not provided anything towards future prospects. Therefore, the amount of compensation is required to be enhanced. The 1st Appellate Court can itself address all issues and decide the first appeal on facts as well as on law by taking aid of provisions of Order 41 Rule 33 CPC. In support of his contention, relies upon the judgment of Hon'ble Supreme Court in ***U.P.S.R.T.C. Vs. Km. Mamta and others (2016) 4 SCC 172***.

I have heard learned counsel for the parties, appraised the paper book and of the view that the compensation is required to be re-assessed in view of the ratio decidendi culled out by Hon'ble Supreme Court in ***Pranay Sethi's case*** (supra). There is no dispute to the fact that the deceased had left behind the agricultural land, income from which can always be generated but the Tribunal has rightly assessed value of managerial skills of the deceased, which the claimants have lost. Therefore, I will retain the same i.e. ₹11,400/- per month and provide 40% increase on the same towards future prospects. I will make a deduction of 1/4th towards personal expenses and apply a multiplier of 16 to assess the loss of dependency as ₹22,98,240/-. I will further add to it ₹70,000/- towards conventional heads of claim.

In all, the compensation payable shall be ₹23,68,240/-. This amount shall also attract interest @7.5% from the date of filing of claim petition till its realization. The distribution of compensation and deposit of share of minors in the nationalized bank shall be done as per the directions already given by the Tribunal. The liability to satisfy the award shall be on the insurance company with liberty to recover the same from the owner and driver.

The award passed by the Tribunal is modified and the appeal filed by the insurance company is allowed in the above terms.

(AMIT RAWAL)
JUDGE

September 14, 2018
Pankaj*

Whether Reasoned/Speaking Yes
Whether Reportable No