IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No. 694 of 2018 (O&M)
Date of decision: 02.02.2018

The Oriental Insurance Company Limited .... *Appellant*

Versus

Harbans Kaur and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. R K Bashamboo,Advocate
for the appellant

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Rekha Mittal, J. (Oral)

CM 2082 CII of 2018

Prayer in this application is for condonation of delay of 22 days in refiling the appeal.

In view of averments made in the application supported by an affidavit of Counsel for the applicant and arguments advanced, the application is allowed and delay of 22 days in refiling the appeal stands condoned.

Main case

The present appeal directs challenge against award dated 01.09.2017 passed by the Motor Accidents Claims Tribunal, Ferozepur (in short, 'the Tribunal') whereby compensation has been assessed in regard to death of Sandeep in a motor vehicular accident that took place on 13.06.2016.

The Tribunal has assessed compensation to the tune of

Rs.15,29,000.00, detailed hereunder:-

Monthly income of the deceased	Rs.6,500.00
Deduction for personal expenses	50%
Addition in income for future prospects	50%
Multiplier	18
Loss of dependency	Rs,14,04,000.00
Loss of love and affection	Rs.1,00,000.00
Expenses of funeral and last rites	Rs.25,000.00

Counsel for the appellant would fairly inform that appeal has been preferred to challenge quantum of compensation assessed by the Tribunal. It is argued that the Tribunal has committed mistake while making calculations qua loss of dependency. The Tribunal has wrongly allowed addition in income for future prospects to the extent of 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.*** Compensation under conventional heads needs to be restricted to Rs.30,000.00.

The deceased was 19 years unmarried grand son of the claimants. The Tribunal has assessed his income at Rs.6,500.00 per month. Taking into consideration minimum wage of an unskilled worker available at the relevant time, income of the deceased is assessed at Rs.7,210.00 per month. The Tribunal has rightly allowed deduction to the extent of 50%. Multiplier adopted by the Tribunal is liable to be affirmed in the light of judgments of Hon'ble the Supreme Court ***Sarla Verma and others v. Delhi Transport Corporation and another 2009(3) R.C.R. (Civil) 77, Munna Lal Jain and another Vs. Vipin Kumar Sharma and others, (2015) 6 SCC 347*** and ***Pranay Sethi's*** case (supra). However, claimant shall be entitled to benefit of increase in income to the extent of 40%. In this view of the matter, loss of dependency comes to Rs.10,90,152.00 (Rs.15,57,360/- *i.e.* Rs.7,210 x 12 x 18 + Rs.6,22,944/- (40% future prospects) - Rs.10,90,152/- (50% deduction).

Under conventional heads, claimants shall be entitled to Rs.30,000.00, in the light of judgment of Hon'ble the Supreme Court in *Pranay Sethi's* case (supra), detailed hereunder:-

Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation is Rs.11,20,152.00 (Rs.10,90,152.00 + Rs.30,000.00). The compensation awarded by the Tribunal is reduced to the extent of Rs.4,08,848.00 (Rs.15,29,000.00 – Rs.11,20,152.00).

Counsel for the appellant has apprised the Court that the Tribunal has awarded interest at the rate of 7.5% per annum but failure of the insurance company to pay the amount within two months from the receipt of copy of the award would invite penal interest at the rate of 10% per annum. It is argued that penal interest cannot be allowed in the light of judgment of Hon'ble the Supreme Court ***National Insurance Co Limited vs. Keshav Bahadur, 2004 ACJ 648***

Contention raised by counsel with regard to imposing penal interest is meritorious, therefore, findings of the Tribunal that failure of the insurance company to pay the amount within two months would attract penal interest at the rate of 10% per annum cannot be allowed to sustain and accordingly set aside. The insurance company shall be liable to pay compensation assessed by this Court with interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

Before parting with the order, it is pertinent to mention that compensation has been reduced to the extent of Rs.4,08,848.00 without notice to the respondents. However, claimants would be at liberty to file an application before this Court if they have any grievance to express. It is clarified that any observations made herein before shall not cause prejudice to the claimants if they prefer an appeal for enhancement.

(Rekha Mittal)
Judge

02.02.2018
mohan bimbra

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