In the High Court of Punjab and Haryana at Chandigarh

FAO- 2442 of 2019(O&M)
Date of Decision: 30.4.2019

IFFCO TOKIO General Insurance Company Limited

---Appellant

versus

Rukaiya and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vishal Aggarwal, Advocate
for the appellant

***

Rekha Mittal, J.

CM No. 7795-CII of 2019

Prayer in this application is for condoning delay of 34 days in refiling the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 34 days in refiling the appeal stands condoned.

Disposed of accordingly.

Main case

The present appeal directs challenge against award dated 26.9.2018 passed by the Motor Accidents Claims Tribunal, Gurugram (in short "the Tribunal") whereby compensation has been assessed on account of death of Salamuddin @ Salamu aged 26 years, in a motor vehicular accident that took place on 29.3.2017.

Counsel for the insurance company would inform that the appeal has been preferred to assail only quantum of compensation.

The Tribunal has awarded Rs. 23,59,038/-, represented in a tabulated form in para 28 of the award. The sole submission made by counsel is that the Tribunal has assessed income of the deceased at Rs. 10,000/- as against minimum wage of Rs. 8280/- per month, in view of notification issued by the State of Haryana. For this purpose, he has pointed out towards findings of the Tribunal recorded in para 23 of the award wherein it has been recorded that as per plea of the claimants, deceased was working as labour having income of Rs. 15,000/- per month but no documentary evidence was produced to substantiate the said fact. As such by applying the principle of guess work, income of the deceased is assessed at Rs. 10,000/-.

As has been pointed out by counsel for insurance company, the minimum wage of an unskilled labour at the relevant time was Rs. 8280/- per month. The Tribunal has not assigned any reason for applying the guess work to assess income of the deceased at Rs. 10,000/- per month. Taking into consideration the minimum wage, income of the deceased is liable to be assessed at Rs. 8300/- per month and ordered accordingly. After applying the other criteria adopted by the Tribunal with regard to addition in income for future prospects, deduction qua personal and living expenses and multiplier, loss of dependency is calculated at Rs. 18,96,384/- [8300 x 12x17= 16,93,200 + 6,77,280 (40%)= 23,70,480 – 4,74,096 (1/5th)].

Compensation allowed by the Tribunal under conventional heads is correct and affirmed when examined in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and**

others vs. National Insurance Company Limited and another AIR 2018 SC 5034.

The Tribunal has awarded Rs. 4238/- towards medical expenses. The same is affirmed.

Total compensation is Rs. 19,70,622/- (18,96,384 +70,000 +4238) and compensation allowed by the Tribunal is reduced to the extent of Rs. 3,88,416/-(25,59,038- 19,70,622). The insurance company shall be at liberty to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

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

(Rekha Mittal)
Judge

30.4.2019
PARAMJIT

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