IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 783 of 2019(O&M)
Date of decision: 6.9.2019

National Insurance Co. Ltd. …..Appellant

VERSUS

Pawandip Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. V. Ramswaroop, Advocate for the appellant.

REKHA MITTAL, J.(Oral)

CM No.2533-CII of 2019

Prayer in this application is for condoning delay of 19 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Amrik Singh, Assistant Manager (Legal), the application is allowed. Delay of 19 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.783 of 2019

Challenge in the present appeal has been directed against award dated 01.10.2018 passed by the Motor Accidents Claims Tribunal, Gurdaspur (in short 'the Tribunal') whereby compensation has been assessed on account of death of Harpreet Singh in a motor vehicular accident that took place on 26.01.2017.

Counsel for the appellant would inform that appeal has been filed to assail quantum of compensation and findings of the Tribunal with regard to violation of terms and conditions of policy as there was no fitness certificate of the vehicle at the time of accident. To assail quantum of compensation, the sole submission made by counsel is that Tribunal has applied cut of 1/4th for personal and living expenses of the deceased but the same should be 1/3rd. There is no evidence that Kuldeep Singh PW-2, father of the deceased was dependent upon his earning. To bring home his contention, counsel has read testimonies of Pawandip Kaur, widow of the deceased CW-1 and Kuldeep Singh CW-2 in extenso and submitted that there is not even a whisper with regard to dependency of Kuldeep Singh, therefore, compensation assessed by the Tribunal may be modified.

The Tribunal, in para 19 of the award, has adverted to the question of deduction for personal expenses with the observations that deceased had to maintain 4 members who are now claimants i.e. his widow, minor son, mother and father. By relying upon judgment of Hon'ble the Supreme Court **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, 1/4th deduction was allowed towards personal expenses of the deceased. The Tribunal has not at all adverted to the question if father of the deceased can be held to be dependent in view of testimonies of the witnesses examined by the claimants, therefore, has faulted in applying deduction to the extent of 1/4th in place of appropriate deduction of 1/3rd.

I have gone through testimonies of Pawandip Kaur and Kuldeep Singh, attested copies whereof were supplied during the course of hearing, taken on record, and find merit in contention of the appellant that in the given circumstances, admissible deduction for personal expenses would be 1/3rd. That being so, loss of dependency comes to Rs.10,20,000/- [Rs.10,20,000/- (Rs.5000 x 12 x 17) + Rs.5,10,000/- (50%

addition towards future prospects) – Rs.5,10,000/- (1/3rd deduction towards personal expenses)].

Compensation allowed by the Tribunal under conventional heads is correct and affirmed.

In view of the above, total compensation is Rs.10,90,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,27,500/- (Rs.12,17,500/- - Rs.10,90,000/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

So far as plea of the insurance company with regard to fitness certificate is concerned, even non-possessing of fitness certificate is not a defence available to the insurance company under Section 149(2) of the Motor Vehicles Act, 1988. As such contention raised by the insurance company is patently misconceived and liable to be rejected.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

Before parting with this order, it is pertinent to mention that 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 appeal filed by the insurance company would not cause prejudice to their right.

SEPTEMBER 6, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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