In the High Court of Punjab and Haryana at Chandigarh

FAO- 1987 of 2019(O&M)
Date of Decision: 15.3.2019

United India Insurance Company Limited

---Appellant

versus

Manju Rani and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Nitin Gupta, Advocate
for the appellant

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Rekha Mittal, J.

The present appeal directs challenge against award dated 1.11.2018 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short "the Tribunal") whereby compensation has been assessed on account of death of Ashwani Kumar in a motor vehicular accident that took place on 26.8.2017.

Counsel for the appellant would inform that the appeal has been preferred to challenge only quantum of compensation.

The Tribunal has awarded Rs.24,51,900/-,detailed hereunder:-

Monthly income of the deceased	Rs. 21,000/-
Addition in income for future prospects	10%
Deduction for personal expenses	1/4th
Multiplier	11
Loss of dependency	Rs. 22,86,900/-
Loss of consortium	Rs. 15,000/-
Transportation charges to claimant No. 1	Rs. 15,000/-
Loss of love, affection, protection guidance etc. to claimants No.2 to 4	Rs. 40,000/- each
Funeral expenses	Rs. 15,000/-

Counsel for the appellant has assailed quantum of compensation primarily on two counts. It is argued that the Tribunal assessed income of the deceased on the basis of last income tax return for the year 2016-17 wherein annual income of the deceased is shown as Rs. 2,51,840/-. It is further argued that returns of the previous years record income less than Rs. 2,51,840/-, therefore, compensation is liable to be assessed by taking into consideration average of income shown in income tax returns, placed on record.

Another submission made by counsel is that compensation allowed by the Tribunal under conventional heads is liable to be restricted to Rs. 70,000/- 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.**

Counsel for the appellant, in response to a query, would fairly inform that income tax return for the year 2016-17, relied upon by the Tribunal, was filed by the deceased himself wherein his income has been shown to the extent of Rs. 2,51,840/-. In the given scenario, the Tribunal has rightly relied upon the latest income tax return for assessing loss of dependency. That being so, there is no merit in contention of the appellant that loss of dependency assessed by the Tribunal is on higher side and needs intervention. However, when the case is examined in the light of decision by a constitution Bench in **Pranay Sethi and others'**

case (supra) and three Judge Bench judgment **Sebastiani Lakra and others' case (supra),** subsequent to the decision by two Judge Bench **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333**, I find merit in contention of the appellant that compensation allowed under conventional heads needs to be restricted to Rs. 70,000/-. Accordingly, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

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

As a consequence, compensation allowed under conventional heads is reduced to the extent of **Rs. 95,000/-**(1,65,000-70,000). The insurance company is left at liberty to file an appropriate application before the Tribunal for recovery of excess amount, if paid.

The Tribunal has allowed interest @ 6% per annum if the payment is made within a period of two months failing which it would be 7.5% per annum. This finding of the Tribunal cannot be upheld when examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur and ors., 2004(2) RCR (Civil) 99.** Compensation payable to the claimants shall carry interest @ 7.5% irrespective of whether the same was paid within two months or otherwise from the date of petition till realization.

In view of what has been discussed hereinbefore, the appeal stands disposed of in the aforesaid terms.

Before parting with this order, it is pertinent to mention that compensation allowed by the Tribunal has been reduced without notice to the claimants. The claimants would be at liberty to file an appropriate 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

15.3.2019.
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No