In the High Court of Punjab and Haryana at Chandigarh

FAO No. 3024 of 1995(O&M) and
Cross objections No. 240-CII of 2014 (O&M)
Date of Decision: 14.10.2019

National Insurance Company Limited

---Appellant

versus

Smt. Bachan Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Deepak Suri, Advocate
for the appellant -insurance company

Mr. Naresh Kumar, Advocate,
for respondents No. 1 to 3-cross objectors

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Rekha Mittal, J.

This order will dispose of FAO No. 3024 of 1995 and Cross Objections No. 240-CII of 2014 as these have emerged out of the same award dated 7.8.1995 passed by the Motor Accidents Claims Tribunal, Hoshiarpur (in short “the Tribunal”) whereby compensation has been assessed on account of death of Bishan Dass in a motor vehicular accident that took place on 16.8.1994.

FAO No. 3024 of 1995 has been filed by the National Insurance Company Limited (hereinafter referred to as “the insurance company”) whereas cross objections have been filed by the claimants.

Counsel for the appellant has failed to file an application, in compliance with order dated 3.9.2019. A relevant extract therefrom, reads as follows:-

> "Notice issued for service of respondent No.5 received back with the report that he has expired.
>
> Counsel for the appellant would state that respondent No.5 is a private limited company and probably the Managing Director or Manager of the said company had passed away. He prays for time to seek necessary instructions and file an appropriate application with regard to person through whom Pritam Bus Service Private Limited is to be served.
>
> Counsel for the appellant is directed to file appropriate application in the Registry within three weeks, failing which appeal against respondent No.5 shall be deemed to be dismissed.
>
> Be listed on 14.10.2019."

In view of the above, appeal against respondent No. 5 stands dismissed.

Since appeal against respondent No. 5-registered owner of the offending vehicle has been dismissed, nothing survives for consideration in regard to validity or otherwise of driving licence possessed by Gurnam Singh-driver of offending Bus No. PAB-6811.

The Tribunal has awarded Rs. 1,60,000/- in the light of observations made in para 12 of the award, reads thus:-

> "That I have gone through the evidence on the file and have heard the counsel for the parties. In this case the deceased had advanced a loan and the Banks are not advancing the loan to the Pauper, without sufficient security, therefore, sufficient income of the deceased Bishan Dass is proved in this case. According to Bachn Kaur, Bishan Dass was the Sarpanch of village and was having good health and according to

suggestion of the respondent the income of the deceased was not less than Rs. 2000/- per month. Therefore considering the facts that parents of the deceased are alive and have good health, therefore, deceased was likely to live for sufficient long time. Therefore, considering the age of the deceased and his income and contribution to the family which was not less than Rs. 3000/- per month and considering the fact that he was running business and had also raised loan from the Bank, I hold that the amount of Rs. 1,60,000/- would be just and reasonable amount which would meet the minimum needs of the claimants. Therefore I award the amount of Rs. 1,60,000/- in all accordingly."

Counsel for respondents No. 1 to 3-cross objectors would argue that compensation assessed by the Tribunal is not based upon any criteria. It is further submitted that Tribunal has an obligation in law to assess just and reasonable compensation but failed to discharge that onerous obligation. It is further argued that compensation may be assessed by applying multiplier method, extending benefit of increase in income for future prospects etc.

Counsel for the insurance company, on the other hand, would argue that there is no clear evidence on record with regard to avocation and income of deceased, aged about 52 years.

The plea of claimants is that Bishan Dass was running business of dairy and poultry farming thereby earning Rs. 5000/- per month. They produced documents Exs. A-3 and A-4 with regard to Bishan Dass having obtained loan from Punjab Scheduled Caste and Development Corporation. Taking a clue from notification issued by the State of Punjab fixing minimum wage coupled with oral and documentary evidence on record, income of deceased is assessed at Rs. 2000/- per month. Claimants shall be entitle to increase in income for future prospects @ 10%. Claim has been filed by the widow, son and widowed mother of deceased. Deduction for personal and living expenses is $1/3^{rd}$. As the deceased was in age bracket of 51-55 years, admissible multiplier is 11. In this manner, loss of dependency is calculated at Rs.1,93,600/- [2000 x 12 x11 = 2,64,000 +26,400 (10%) = 2,90,400 – 96,800 ($1/3^{rd}$ thereof)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs. 70,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 2,63,600/- and the additional amount is Rs.1,03,600/- payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased.

The appeal filed by the insurance company in dismissed and cross objections are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

14.10.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No