IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2002 of 2019(O&M)

Date of decision: 15.3.2019

United India Insurance Co. Ltd. …..Appellant

VERSUS

Nathiya Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vishwajit Bedi, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.6174-CII of 2019

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

Heard.

In view of averments made in the application supported by an affidavit of Rakesh Kumar, Deputy Manager, United India Insurance Company Ltd, the application is allowed. Delay of 34 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No.2002 of 2019

Challenge in the present appeal has been directed against award dated 02.11.2018 passed by the Motor Accidents Claims Tribunal, Rewari (in short 'the Tribunal') whereby compensation has been assessed on account of death of Om Parkash, unmarried son of the claimants in a motor vehicular accident that took place on 23.12.2017.

Counsel for the appellant- United India Insurance Company Ltd. (hereinafter referred to as the 'insurance company') would inform that the appeal has been preferred to assail only quantum of compensation assessed by the Tribunal.

The Tribunal has awarded Rs.14,98,000/- detailed hereunder:-

Monthly income of the deceased	Rs.10000/-
Addition in income for future prospects	40%
Deduction for personal expenses	50%
Multiplier	17
Loss of dependency	Rs.14,28,000/-
Loss of filial consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

The sole submission made by counsel for the appellant is that the Tribunal has assessed income of the deceased at Rs.10,000/- per month but the minimum wage of an unskilled labour at the relevant time was Rs.8500/- per month. It is further argued that there is no evidence on record that the deceased was a skilled person and as such compensation is liable to be reduced by assessing proper income.

The Tribunal in para 16 of the award, has noticed that plea of the claimants is that the deceased was doing the work of labour thereby earning Rs.25,000/- per month. The Tribunal has held that mere pleadings cannot take the place of proof and cogent and convincing evidence was required to prove the same. Further held that his wage cannot be taken less than that of unskilled person which at the relevant time was Rs.10,000/- per month. As per the notification issued by the State of Haryana, minimum wage of an unskilled person at the relevant time was

Rs.8497.56p. Taking a clue from the notification but in the absence of any evidence to prove income of the deceased, income is assessed at the rate of Rs.8500/- per month. Addition in income for future prospects and deduction for personal expenses allowed by the Tribunal are correct and affirmed. As per plea of the claimants, the deceased was 22 years old. In the claim application, age of the mother is 38 years and that of the father is 40 years. In the postmortem report, he is stated to be 26 years old. The Tribunal has given primacy to the postmortem report viz-a-viz age stated by father of the deceased. However, there is nothing on record suggestive of the fact that the respondent before the Tribunal ever challenged the correctness of age of parents of the deceased. At the same time, there is no evidence on record as to at whose behest age of the deceased was mentioned in the postmortem report. Taking a view from age of parents of the deceased coupled with statement of the father on oath, deceased is held to be less than 25 years of age and accordingly, multiplier of 18 would be applied. In this manner, loss of dependency is calculated at Rs.12,85,200/- [Rs.18,36,000/- (Rs.8500/- x 12 x 18) + Rs.7,34,400/- (40% towards future prospects) – Rs.12,85,200/- (50% deduction towards personal expenses)].

In view of the above, total compensation comes to Rs.13,55,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,42,800/- (Rs.14,98,000/- - Rs.13,55,200/-) .

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.

MARCH 15, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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