**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 3316 of 2019(O&M)

Date of decision: 20.5.2019

Reliance General Insurance Company Ltd …..Appellant

VERSUS

Surinder Pal Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sanjeev Kodan, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

CM No.11356-CII of 2019

Prayer in this application is for condoning delay of 3 days in re-filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit of Mr. Sanjeev Kodan, Advocate, the application is allowed. Delay of 3 days in re-filing the appeal stands condoned.

Disposed of accordingly.

FAO No.3316 of 2019

The present appeal directs challenge against award dated 02.01.2019 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short 'the Tribunal') whereby compensation has been allowed on account of death of Asha Rani in a motor vehicular accident that took place on 10.05.2017.

Counsel for the appellant would inform that the appeal has been preferred to assail quantum of compensation assessed by the Tribunal.

The Tribunal awarded Rs.53,82,439/- detailed hereunder:-

Monthly income of the deceased	Rs.57,889/-
Addition in income for future prospects	15%
Annual income	Rs.7,98,864/-
Less income tax	Rs.74,441/-
Deduction towards personal and living expenses	1/3rd
Multiplier	11
Loss of dependency	Rs.53,12,439/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-

Counsel for the appellant would argue that the Tribunal has taken into consideration the entire income of the deceased for computing loss of dependency but benefit of certain allowances paid to the deceased should not be extended. Another submission made by counsel is that application for compensation has been filed by the husband and two adult children of the deceased. The husband of deceased is gainfully employed and he is drawing salary more than Rs.90,000/- per month, therefore, he cannot be held to be dependent on income of the deceased. Shubham Bhatti, son of the deceased, appeared in the witness box but he did not produce any document to prove that he was a student at the time of accident and as such it can be inferred that Shubham Bhatti was gainfully employed. Indu, daughter of the deceased, did not appear in the witness box to say that she was dependent on earning of the deceased, therefore, the Tribunal has seriously erred by allowing loss of dependency.

The contentions raised by the insurance company are patently mis-conceived and liable to be rejected. The insurance company is required to examine the case in the light of judgments on the issue called *stare* decisis before preferring an appeal as it involves lot of effort, energy, money and manpower.

The contention of the insurance company that benefit of allowances is not to be given is untenable in view of the judgments of Hon'ble the Supreme Court **Manasvi Jain versus Delhi Transport Corporation, (2014) 13 SCC 22** and **National Insurance Company Limited vs. Indira Srivastava and others 2008(1)RCR (Civil) 359**.

Coming to the question of dependency of the claimants on the deceased. Shubham Bhatti appeared in the witness box and stated on oath that he was a student at the time of unfortunate occurrence when he lost his mother. Except the suggestions put by counsel for the insurance company that he is gainfully employed, which, undenyingly, is not a substantive piece of evidence, the insurance company did not adduce any evidence to counter testimony of Shubham Bhatti.

The deceased left behind two daughters and one of them is stated to be married and she has not claimed compensation. Unmarried daughter of the deceased is stated to be studying abroad and entitle to get compensation. Even if both children of the deceased are held to be dependent on her income, deduction for personal expenses would be $1/3^{rd}$, as has been allowed by the Tribunal. The Tribunal has rather deducted income tax to the extent of Rs.74,441/- after calculating the annual income including 15% addition towards future prospects. Liability to pay income tax is to be deducted from the annual income before making addition towards future prospects when examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. In view of the above, I do not find an error much less illegality in assessment made by the Tribunal.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed in limine with costs of Rs.25,000/- to be deposited with the Legal Services Committee of this Court.

MAY 20, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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