

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 2601 of 2019(O&M)
Date of Decision: 22.4.2019**

New India Assurance Company Limited

---Appellant

versus

Kaushalya and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.C.Kapoor, Advocate
for the appellant

Rekha Mittal, J.
CM No. 8672-CII of 2019

Prayer in this application is for condoning delay of 20 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicant, application is allowed and delay of 20 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 2601 of 2019

The present appeal directs challenge against award dated 21.11.2018 passed by the Motor Accidents Claims Tribunal, Rewari (in short "the Tribunal") whereby compensation has been assessed on account of death of Mukesh in a motor vehicular accident that took place on 1.5.2017.

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

The Tribunal awarded Rs.26,40,400/-, detailed hereunder:-

Monthly income of the deceased	Rs. 12,000/-
Addition in income for future prospects	40%
Deduction for personal expenses	1/4 th
Multiplier	17
Loss of dependency	Rs. 25,70,400/-
Loss of consortium	Rs. 40,000/-
Loss of estate	Rs. 15,000/-
Funeral expenses	Rs. 15,000/-

The sole submission made by counsel for the appellant is that the Tribunal has assessed income of the deceased by treating him as an unskilled person but minimum wage at the relevant time was approximately Rs. 8500/- per month.

The Tribunal, in para 18 of the award, has noticed that as per plea of the claimants, the deceased was self employed as labour, running a shop at Gurawara bus stand and also doing agriculture work thereby earning Rs. 25,000/- per month. It has further been noticed that no documentary proof in this regard has been produced on record by the claimants. However, it has been held that his wage cannot be taken less than that of an unskilled person which at the relevant time was Rs. 12,000/- per month. The Tribunal has not mentioned as to on what basis wage has been assessed at Rs. 12,000/- per month as against minimum wage available at the relevant time in view of notification issued by the State of Haryana. Taking into consideration notification issued by the State of Haryana coupled with absence of satisfactory and cogent evidence with regard to avocation and income of the deceased, income of the deceased is assessed at Rs. 8500/- per month. The other criteria adopted by the Tribunal for assessing loss of dependency is correct and accordingly affirmed. In this manner, loss of

dependency is calculated at Rs.18,20,700/- [8500 x 12 x17= 17,34,000 + 6,93,600(40%)=24,27,600-606,900(1/4th)].

Similarly, compensation awarded by the Tribunal under conventional heads is in consonance with 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 and the same is affirmed.

Total compensation is Rs. 18,90,700/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 7,49,700/- (26,40,400-18,90,700). The insurance company shall be at liberty to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

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

22.4.2019

PARAMJIT	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes/No