IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3516 of 2019(O&M)

Date of decision: 19.8.2019

National Insurance Co. Ltd. …..Appellant

VERSUS

Top Shri and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 07.03.2019 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (in short 'the Tribunal') whereby compensation has been assessed on account of death of Narsingh Pal @ Pappu in a motor vehicular accident that took place on 05.10.2017.

Counsel for the appellant would argue that appeal has been preferred primarily to assail quantum of compensation assessed by the Tribunal. To bring home his contention, he has three-fold submissions to make. It is argued that the Tribunal has applied cut of 1/5 qua personal and living expenses of the deceased but the same should be 1/3rd as performa respondents No.4 and 5 (before the Tribunal), married son and daughter respectively of the deceased, are not entitle to loss of dependency. It is further argued that the Tribunal has allowed addition in income for future prospects at the rate of 30% as against 25% admissible in the circumstances of the present case.

Another submission made by counsel is that the Tribunal has assessed income of the deceased at Rs.9592/- per month by treating him as skilled labour but his income is liable to be assessed as an unskilled person even if he was a gardener.

The application for compensation has been filed by the widow, one son aged 18 years and daughter aged 15 years arrayed as claimants and other two children of the deceased have been impleaded as performa respondents. The married daughter of deceased may not be entitle to loss of dependency but adult and married son cannot be altogether denied compensation. In the given circumstances, admissible deduction for personal expenses would be $1/4^{th}$.

The Tribunal has assessed income of the deceased to the extent of Rs.9592/- per month. Besides testimony of one of the claimants, they have examined witnesses to prove that the deceased was working as a gardener with nurseries. In the given circumstances, I do not find any reason to interfere in assessment of income made by the Tribunal.

The claimants shall be entitle to addition in income for future prospects at the rate of 25% as against 30%, in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**. Accordingly, loss of dependency is calculated at Rs.15,10,740/- [Rs.16,11,456/- (Rs.9592/- x 12 x 14) + Rs.4,02,864/- (25% addition towards future prospects) – Rs.5,03,580/- ($1/4^{th}$ deduction towards personal expenses)].

The claimants shall be entitle to additional sum of Rs.15,000/- for loss to estate. Compensation qua loss of consortium and funeral expenses allowed by the Tribunal is affirmed.

In view of the above, total compensation is Rs.15,80,740/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,50,172/- (Rs.17,30,912/- - Rs.15,80,740/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

Perusal of the award would reveal that in the concluding para, interest at the rate of 6% has been allowed only if the insurance company fails to pay the amount within two months. The Tribunal has not assigned any reason for extending this concession to the insurance company to escape its liability to pay interest if the compensation is paid within two months. This finding of the Tribunal cannot be allowed to sustain and is accordingly set aside. The claimants shall be entitle to compensation assessed by this Court with interest at the rate of 7.5% per annum from the date of petition till realization.

In view of what has been discussed hereinbefore, 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.

AUGUST 19, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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