IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4697 of 2007 (O&M)
Date of Order:17.01.2019

National Insurance Company Limited

..Appellant

Versus

Sheela Devi and others **..Respondents**

FAO No.1230 of 2008

Sheela Devi and others

...Appellants

Versus

Raghbir Singh and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwani Talwar, Advocate,
for the appellant (in FAO No.4697 of 2007)
for respondent no.3(in FAO No.1230 of 2008)

Mr. B.D.Sharma, Advocate,
for the appellants(in FAO No.1230 of 2008)

Ms. Manjari Joshi, Advocate,
for respondent no.2(in FAO No.1230 of 2008)
for respondent no.5(in FAO No.4697 of 2007)

ANIL KSHETARPAL, J(Oral)

These two appeals i.e. FAO No.4697 of 2007 and FAO No.1230 of 2008 have come up for final disposal.

FAO No.1230 of 2008 is filed by the claimants seeking enhancement in the compensation awarded by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the 'Tribunal').

Rakesh Kumar, deceased, aged about 21 years died in a motor vehicular accident and there is no challenge to the findings of the learned Tribunal with regard to a accident which took place on account of rash and negligent driving. So, the only issue which needs determination is "what is the appropriate compensation payable to the mother and 2 sisters.

It may be noted that Rakesh Kumar was unmarried. He was a diploma holder from Industrial Training Institute in motor mechanics. It is claimed that he was working in a motor garage, drawing salary of Rs.4500/- per month. The learned Tribunal on appreciation of evidence has disbelieved the evidence of the employer and returned a finding that the income was Rs.3000/- per month. Although, learned counsel for the appellants-claimants has strenuously argued that the income assessed by the learned Tribunal is erroneous, however, keeping in view the cogent reasons which have been assigned by the learned Tribunal and this court does not in any reason to interfere with the same. The learned Tribunal has imposed a cut of Rs.500/- on account of self expenses of the deceased. Deceased was unmarried. It is by now well settled that in case of unmarried person, deduction on account of own expenses is to be 50%. Reference can be made to a judgment passed by the Constitution Bench in the case of ***National* Insurance Company Limited vs. *Pranay Sethi and others, JT 2017(10) SC 450***, Thus, the dependency is worked out Rs.15,00/-. However, learned Tribunal has not taken into consideration the future prospects. The deceased was a young man of 21 years and technically qualified. He would have progressed in life and income would have increased.

Keeping in view the aforesaid facts and taking clue from the judgment passed by a Constitution Bench in the case of ***Pranay Sethi***

(supra), income is liable to be increased in addition of 40%. Thus, the income assess for the purpose of calculating dependency is Rs.4,200/- and after 50% deduction, the amount comes to Rs.2100/-. Since, the age of deceased was 21 years, therefore, multiplier of 18 would be applicable. The amount worked out comes to Rs.4,53,600/-.

Learned counsel for the appellants has further submitted that no amount has been awarded on account of funeral expenses, loss of consortium and loss of estate. As per the judgment passed by the Constitution Bench in the case of ***National* Insurance Company Limited vs. *Pranay Sethi and others, JT 2017(10) SC 450***, Rs.70,000/- is the maximum amount, which can be awarded under the conventional heads. In a subsequent judgment by the Hon'ble Supreme Court while deciding Civil Appeal No.9581 of 2018 (***Magma General Insurance Co. Ltd. V Nanu Ram alias Chuhru Ram and others)*** has held that parents are also entitled to filial consortium @ Rs.40,000/- each. However, since, in the present case, out of parents, only mother is the claimant, therefore, after adding compensation for funeral expenses and loss of estate, the total amount under the conventional heads comes to Rs.70,000/-.

In view of the aforesaid facts, FAO No.1230 of 2008 is disposed of and the compensation shall stands increased to Rs.5,23,600/- including the compensation already awarded. The increased compensation so assessed shall be payable along with interest @ 7.5% from the date of claim petition till its realization.

FAO No.4697 of 2007

Now let's deal with the appeal filed by the Insurance Company.

Although, this court does not have benefit of trial court record because it has been burnt, however, learned counsel for the appellant-Insurance Company has submitted that on 22.06.2007, application for additional evidence was moved before the learned Tribunal for permission to lead additional evidence as there was doubt about the correctness of the driving licence originally issued by the Licensing Authority at Mumbai. Copy of the application has been placed on file as Annexure A-1. He submits that the aforesaid application for additional evidence was not decided and the Tribunal rather chose to decide the main case without deciding the application.

Learned counsel for the appellant has further submitted that the application for permission to lead additional evidence has also been moved in this court requesting the court to appoint a Local Commissioner to visit the office of the Licensing Authority at Mumbai and ascertain the genuineness of the driving licence produced by Raghbir Singh, respondent no.1 herein.

Since, this court is not in a position to return any positive finding whether an application was moved or not before the learned Tribunal, therefore, this court has to draw an inference on the basis of application annexed allegedly filed before the learned Tribunal. In these circumstances, this court concludes in absence of any material to the contrary that the application has not been decided.

Keeping in view the aforesaid facts, the case is remitted back to the learned Tribunal to re-decide the issue of valid and effective driving licence possessed by respondent no.1 at the time of accident.

The learned Tribunal would grant opportunity to both the parties to lead evidence and establish their case. Since, the appeal filed by the claimants has already been decided and the Insurance Company would be entitled to recovery rights if it proves that the driving licence was not genuine, therefore, this court has decided the appeal of the claimants and has chosen to remit the matter back to the learned Tribunal only on limited issue.

Learned counsel for the claimants has submitted that the directions be issued to the Insurance Company to pay the amount.

The question of enhancement has been decided and this court has no doubt that the Insurance Company would pay the compensation to the claimants subject to further decision of the learned Tribunal.

Parties are directed to appeal before the learned Tribunal on 06.02.2019.

January 17, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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