IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 16.07.2019

FAO No.156 of 2011 (O&M)

Reliance General Insurance Company Ltd. ... Appellant

Versus

Puran Singh and others ... Respondents

FAO No.2392 of 2011 (O&M)

Puran Singh and another ... Appellants

Versus

Mahi Pal and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate for the insurance company.

Mr. Sagar Aggarwal, Advocate for the claimants.

Ms. Jaspreet Kaur, Advocate for
Mr. Ashish Yadav, Advocate for the driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.156 and 2392 of 2011 as these have emerged out of the same award dated 12.11.2010 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been assessed on account of death of Satish Bhardwaj in a motor vehicular accident that took place on 13.03.2010.

FAO No.156 of 2011 has been filed by the Reliance General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

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

The Tribunal awarded Rs.41,20,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.40,000/-
Multiplier	17
Deduction for personal expenses	50%
Loss of dependency	Rs.40,80,000/-
Expenses on funeral	Rs.20,000/-
Loss of love and affection and mental agony	Rs.20,000/-

Counsel for the insurance company would argue that income of the deceased assessed by the Tribunal is on higher side and needs reduction. To bring home his contention, it is argued that flexible benefit package depends upon performance of the deceased and performance of the company with which the deceased was working at the time of accident, as has been admitted by Rajiv Joshi, Director, M/s Aricent Technologies (Holdings) Ltd., Gurgaon, therefore, claimants are not entitle to benefit of flexible benefit package for assessing loss of dependency.

Counsel representing the claimants, on the contrary, has pressed for enhancement of compensation by considering annual income of the deceased to the tune of Rs.6,41,481/- on the basis of documents produced by Rajiv Joshi PW8 examined in pursuance of directions of this Court. It is argued that the witness has produced salary slips marked as Exs.PW8/A to PW8/N and perusal thereof would reveal that flexible benefit package had increased from time to time and eventually it was raised to Rs.20,965/- in January, 2010 onwards and as such, the claimants cannot be deprived of benefit of flexible benefit package being a part of salary of the deceased. He would further submit that claimants are entitle to addition in income for future prospects to the tune of 50% as the deceased was 27 years old at the time of occurrence.

I have heard counsel for the parties, perused the paper book particularly the award and testimony of Rajiv Joshi PW8.

Rajiv Joshi PW8 produced documents Exs.PW8/A to PW8/O in his endeavor to prove what was paid to the deceased by the company. It has also been proved on record that deceased had gone to USA on behalf of the company from February to December 2009. As has been rightly argued by counsel for the claimants, flexible benefit package is a monthly feature reflected in the various salary slips produced on record. The deceased was paid flexible benefit package @ 20,965/- w.e.f. January, 2010 onwards till he unfortunately died on 13.03.2010. In this view of the matter, it is difficult to accept contention of the insurance company that benefit of flexible benefit package cannot be extended to the claimants for assessing loss of dependency. However, perusal of Ex.PW8/C would reveal that a sum of Rs.3000/- was paid by the company towards premium for securing some insurance benefits for the deceased. Since the benefit of those insurance schemes has been availed by the claimants, they cannot be permitted to assert their claim with regard to Rs.3000/- paid by the employer as premium for those insurance policies. In this manner, annual income of the deceased is calculated at Rs.6,38,481/-. After deducting income tax (Rs.98,410/-), net annual income is Rs.5,40,071/-. Claimants shall be entitle to addition in income for future prospects @ 50%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.68,85,905/- [(5,40,071 x 17) + (50% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/- .

Total compensation is Rs.69,15,905/- and additional amount is Rs.27,95,905/- (69,15,905 – 41,20,000) payable with interest @7.5% per annum from the date of petition till realization, to mother of the deceased, to be invested in fixed deposit for a period of three years.

For the foregoing reasons, the appeal filed by the claimants is partly allowed in the aforesaid terms. As a natural corollary, the appeal filed by the insurance company is dismissed, leaving the parties to bear their own costs.

16.07.2019
ashok

(REKHA MITTAL)
JUDGE

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