IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4575 of 2019(O&M)

Date of decision: 25.7.2019

National Insurance Co. Ltd. …..Appellant

VERSUS

Kamlesh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Lalit Garg, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 30.04.2019 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short 'the Tribunal') whereby compensation has been assessed on account of death of Ramrath in a motor vehicular accident that took place on 09.01.2018.

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

The Tribunal awarded Rs.24,26,200/- detailed hereunder:-

Monthly income of the deceased	Rs.11,000/-
Deduction for personal expenses	1/4th
Multiplier	17
Addition in income for future prospects	40%
Loss of dependency	Rs.23,56,200/-
Compensation under conventional heads	Rs.70,000/-

Counsel for the appellant has assailed the award primarily on two counts. The first submission made by counsel is that income of the deceased is assessed at Rs.11,000/- per month but minimum wage of an unskilled labour at the relevant time was approximately Rs.8500/- per month. It is further argued that the Tribunal has allowed interest at the rate of 9% per annum but the same would be 12% per annum in case the insurance company fails to pay compensation within 60 days. It is submitted that penal clause with regard to payment of interest at the rate of 12% per annum may be set aside.

The Tribunal, in para 15 of the award, has noticed that claimants examined Shankar Singh, Salesman, Priyanka Trading Company, Helimandi, Gurugram PW-3 to prove employment and income of the deceased. The witness in his cross examination had stated that he had not brought attendance register, register qua payment of salary and appointment letter and had produced only salary certificate Ex.P3, therefore, the Tribunal refused to rely upon testimony of the witness and salary certificate Ex.P3 qua income of the deceased. However, the Tribunal assessed income of the deceased at Rs.11000/- per month without assigning any reason in this regard. In the given circumstances, income of the deceased assessed by the Tribunal is on higher side. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.9000/- per month. The other criteria adopted by the Tribunal for assessing loss of dependency is correct and affirmed. Accordingly, loss of dependency is calculated at Rs.19,27,800/- [Rs.18,36,000/- (Rs.9000 x 12 x 17) + Rs.7,34,400/- (40% addition towards future prospects) – Rs. 6,42,600/- (1/4th deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is in consonance with judgment of Hon’ble the Supreme Court

National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.

In view of the above, total compensation is Rs.19,97,800/- and compensation awarded by the Tribunal is reduced to the extent of Rs.4,28,400/- (Rs.24,26,200/- - Rs.19,97,800/-).

The Tribunal has allowed penal interest at the rate of 12% per annum in case the insurance company fails to pay compensation within 60 days. The same cannot be allowed to sustain when examined in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur, 2004 ACJ 648.** The claimants shall be entitle to interest at the rate of 9% per annum on compensation held payable by this Court 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 observations made for disposing of appeal filed by the insurance company would not cause prejudice to them.

JULY 25, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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