IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 22.8.2019

1. **FAO No. 5216 of 2019(O&M)**

National Insurance Company Ltd. …..Appellant

VERSUS

Roshan Lal and others .....Respondents

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2. **FAO No. 5224 of 2019(O&M)**

National Insurance Co. Ltd …..Appellant

VERSUS

Surinder and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepak Suri, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

This order will dispose of FAO Nos.5216 and 5224 of 2019 as these have emerged out of the same accident that took place on 20.01.2017 wherein Sanjay Kumar son of Roshan Lal and Sanjay Kumar son of Naresh Kumar received injuries that proved fatal.

Counsel for the appellant would argue that FIR in this case was registered at the behest of Anil Kumar against an unknown vehicle and unknown driver but later the offending vehicle has been indicted, in order to extract compensation from the insurance company. It is further argued that claimants examined Gurjeet Singh, alleged eye-witness to the occurrence but his testimony is not worthy of credence and reliance, therefore, cannot form the basis to sustain findings recorded by the Tribunal, on issue No.1. Another submission made by counsel is that in claim preferred qua death of Sanjay Kumar son of Naresh Kumar, the Tribunal has applied deduction for personal expenses to the tune of 1/3rd but admissible deduction should be 50%.

I have heard counsel for the appellant, perused the paper-book and testimonies of Gurjeet Singh PW-3 and Naresh Kumar, father of one of the deceased namely Sanjay Kumar son of Naresh Kumar made available during the course of hearing.

Indisputably, on due investigation of FIR registered at the behest of Anil Kumar, challan has been presented in the Court for trial of Balbir Singh, driver of offending vehicle. Counsel for the appellant, in response to a query, would fairly inform that there is no material on record to prove any collusion between the claimants on one hand and driver or owner of the offending vehicle on the other. He has also conceded that there is nothing on record suggestive of the fact that Gurjeet Singh PW-3 is related to the claimants much less a beneficiary in case the claim is allowed. I have gone through testimony of Gurjeet Singh particularly cross examination to which he was subject to at the behest of counsel for the insurance company before the Tribunal but find myself unable to accept contention of the insurance company that testimony of Gurjeet Singh does not inspire confidence or the same is not worthy of credence and reliance. On the contrary, a plain reading of cross examination of Gurjeet Singh would reveal that he is an independent witness and had narrated the occurrence being an eye-witness at the time of unfortunate accident. In this view of the matter, there is no merit in contention of the insurance company that findings of the Tribunal on issue No.1 suffer from an error much less perversity that would call for intervention.

This brings the Court to compensation assessed for death of Sanjay Kumar son of Naresh Kumar particularly the aspect of deduction qua personal expenses of the deceased. The application for compensation has been filed by the parents and adult brother of the deceased. Perusal of testimony of Naresh Kumar, father of the deceased, makes it evident that there is no specific reference as to how Munish Kumar aged 24 years, brother of the deceased, was dependent on his earning. It has not been clearly proved on record with regard to any disability to Naresh Kumar to accept his contention that Munish Kumar, his son, was dependent upon deceased Sanjay Kumar. When the case is examined in the light of observations made by Hon'ble the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**, it is difficult to sustain findings of the Tribunal applying cut of 1/3rd in place of 50% for personal and living expenses of the deceased. As such, 50% of the amount is to be deducted for personal and living expenses of the deceased for computing loss of dependency. The other criteria followed by the Tribunal for assessing loss of dependency appears to be correct. Accordingly, loss of dependency is calculated at Rs.12,09,600/- [Rs.17,28,000/- (Rs.8000 x 12 x 18) + Rs.6,91,200/- (40% addition towards future prospects) – Rs. 12,09,600/- (50% 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 comes to Rs.12,39,600/- and compensation awarded by the Tribunal is reduced to the extent of Rs.4,03,200/- (Rs.16,42,800/- - Rs.12,39,600/-).

In view of what has been discussed hereinbefore, FAO No.5216 of 2019 sans merit and is dismissed. FAO No.5224 of 2019 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 22, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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