IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3327 of 2014 (O&M)
Date of decision: 26.03.2019

Oriental Insurance Company Ltd. ... Appellant

Versus

Naveen Kumar Garg and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Chaudhri, Advocate
for the appellant.

Ms. Amandeep Kaur, Advocate
for respondents No.1 to 4.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 03.01.2014 passed by the Motor Accidents Claims Tribunal, SAS Nagar, Mohali whereby compensation has been assessed on account of death of Madan Lal Garg in a motor vehicular accident that took place on 24.01.2013.

Counsel for the insurance company would inform that the appeal has been preferred to assail quantum of compensation as well as on the issue of driving licence, possessed by driver of truck No.PB-65-H-8829.

The Tribunal has awarded Rs.23,98,604/-, detailed hereunder:-

1. Annual income of the deceased	Rs.3,01,103/-
2. Addition in income for future prospects	30%

3. Multiplier	9
4. Deduction for personal expenses	1/3rd
5. Loss of dependency	Rs.23,48,604/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate	Rs.25,000/-

Counsel for the appellant would argue that application for compensation has been filed by three adult sons and mother of deceased Madan Lal Garg, therefore, admissible deduction for personal expenses should be 50% in place of 1/3rd. The deceased was 57 years old and admissible increase for future prospects should be 10%. Compensation allowed under conventional heads needs modification in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

With regard to driving licence, it is argued that the insurance company has filed an application under Order 41 Rule 27 read with Section 151 CPC for adducing additional evidence to produce on record verification report dated 13.03.2014 (Annexure A1) that records that the original licence was not issued by the Licensing Authority, Patiala. It is further argued that as original licence possessed by the driver was not valid, renewal of that licence will not enure to benefit of the registered owner qua breach of terms and conditions of insurance policy.

Counsel for the claimants, on the contrary, has supported assessment made by the Tribunal except that future prospects allowed @ 30% may be modified.

The application for compensation was filed by three adult sons and mother of deceased Madan Lal Garg. The Tribunal has applied 1/3rd cut for personal and living expenses of the deceased. Even if sons of the deceased were not absolutely dependent upon income of Madan Lal Garg, it is difficult to accept that they would not be entitle to get compensation much less substantial amount towards loss of estate. In the given scenario, I do not find an error in deduction for personal and living expenses applied by the Tribunal. However, addition in income for future prospects would be @ 10% as the deceased was 57 years old. In this manner, loss of dependency is calculated at Rs.19,87,279/- [(3,01,103 x 9) + (10% future prospects) – (1/3rd 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.20,17,279/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,81,325/- (23,98,604 - 20,17,279). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

This brings the Court to question of driving licence possessed by Sucha Singh, driver of offending vehicle. The report sought to be produced by the insurance company by way of additional evidence is not per se admissible in evidence and as such, the insurance company cannot be heard to say that licence possessed by the driver was not valid or it was fake. That being so, contention of the insurance company that the insured is guilty of violating the terms and conditions of insurance policy entitling the insurance company to press for right of recovery is not meritorious and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

26.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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