IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 25.09.2019

FAO No.1288 of 2016 (O&M)

The Oriental Insurance Co. Ltd. ... Appellant

Versus

Vinod Devi and others ... Respondents

FAO No.5478 of 2016 (O&M)

Vinod Devi ... Appellant

Versus

Ravi Saini and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Pabbi, Advocate for the insurance company.

Mr. Dalel S. Nain, Advocate for the claimant.

Mr. Ramesh Goyat, Advocate for driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1288 and 5478 of 2016 as these have emerged out of the same award dated 07.11.2015 passed by the Motor Accidents Claims Tribunal, Kaithal whereby compensation has been assessed on account of death of Ramesh Chander in a motor vehicular accident that took place on 22.02.2015.

FAO No.1288 of 2016 has been filed by Oriental Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been preferred by the claimant seeking enhancement of compensation.

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

The Tribunal awarded Rs.16,80,425/-, detailed hereunder:-

Monthly income of the deceased	Rs.27,369/-
Addition in income for future prospects	15%
Multiplier	9
Deduction for personal expenses	50%
Expenses on funeral	Rs.20,000/-
Loss of consortium	Rs.20,000/-
Loss of love and affection	Rs.1,00,000/-
Medical expenses	Rs.42,500/-
Expenses on transportation	Rs.20,000/-

Counsel for the insurance company would argue that as the deceased was due for retirement after two months from the date of death, split multiplier may be applied. It is further argued that compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for the claimant, on the contrary, would argue that even if widow is sole dependent upon the deceased, deduction for personal expenses should be 1/3rd. Another submission made by counsel is that the Tribunal has wrongly denied benefit of HRA while computing monthly loss of dependency.

The deceased was working as Clerk in Excise and Taxation Department at gross salary of Rs.29,096/- per month mentioned in

Ex.PW2/A. Out of this amount, a sum of Rs.1227/- was paid towards HRA and Rs.500/- for medical allowance. The amount paid towards HRA is not liable to deduction for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313**. In this manner, monthly loss of dependency comes to Rs.28,596/- and annual income is Rs.3,43,152/-. After deducting income tax (Rs.7,534/-), net annual income is Rs.3,35,618/-. Claimant shall be entitle to addition in income for future prospects @ 15% as deceased was a regular government employee.

The claim application has been filed by widow of the deceased. The admissible deduction for personal and living expenses would be 1/3rd. In this context, reference can be made to judgment of this Court **Balvir Kaur and others Vs. Surender alias Surinder Singh and others, FAO No.8419 of 2015, decided on 27.03.2019.**

This brings the Court to multiplier applied by the Tribunal. Counsel for the insurance company would argue that a split multiplier may be applied as the deceased was due for retirement within a span of two/three months from the date of death. The contention raised by insurance company is not tenable when examined in the light of judgment of this Court **Jasmel Kaur and another Vs. Sukhraj Singh and others, FAO No.4858 of 2012 and connected case, decided on 07.02.2018**.

Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.23,15,764/- [(3,35,618 x 9) + (15% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimant shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

The sum of Rs.42,500/- towards medical expenses is affirmed.

Total compensation is Rs.24,28,264/- and additional amount is Rs.7,47,839/- (24,28,264 - 16,80,425), payable with interest @ 7.5% per annum from the date of petition till realization, except for the period of delay of 154 days in filing the appeal, to be invested in fixed deposit for a period of two years.

In view of what has been discussed hereinbefore, the appeals are disposed of in the aforesaid terms. The claimant shall furnish an affidavit before the Tribunal within 30 days of receipt of certified copy that medical bills referred to in the award on the basis whereof a sum of Rs.42,500/- has been allowed have not been reimbursed by department of the deceased, failing which amount of Rs.42,500/- with interest thereon shall not be released.

25.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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