In the High Court of Punjab and Haryana at Chandigarh

FAO-1318 of 2016 (O&M)
Date of Decision: 20.9.2019

National Insurance Company Limited

---Appellant

versus

Krishna Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Paul S.Saini, Advocate
and Mr. Vipul Sharma, Advocate
for the appellant

Mr. Vinod Kanwal, Advocate,
for the claimants

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Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 5.10.2015 passed by the Motor Accidents Claims Tribunal, Karnal (in short “the Tribunal”) whereby compensation has been assessed on account of death of Ram Parkash in a motor vehicular accident that took place on 13.1.2003.

The Tribunal awarded Rs.14,80,200/-, detailed hereunder:-

Monthly income of the deceased	Rs. 4000/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/4th
Multiplier	14
Loss of dependency	Rs. 6,55,200/-
Loss of consortium to spouse	Rs. 1 lakh
Loss of love and affection for sons, widow and daughter of deceased	Rs. 7 lakh
Loss of estate	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and findings of the Tribunal on issue No. 3 pertaining to driving licence.

With regard to quantum of compensation, it is argued that addition in income for future prospects and compensation allowed under conventional heads may be modified in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Counsel would argue that driver-cum-owner of offending vehicle did not contest claim application nor produced driving licence possessed by him, therefore, he failed to discharge his primary obligation and as such, insurance company was denied an opportunity to verify driving licence, if any, possessed by driver of offending vehicle. It is further argued that in the given circumstances, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants. For this purpose, reliance has been placed on **Pappu and others vs. Vinod Kumar Lamba and another 2018(1) PLR 425.**

Counsel representing the claimants has supported assessment made by the Tribunal.

Claimants shall be entitle to addition in income for future prospects @ 25%. Other criteria adopted by the tribunal for computing loss of dependency is affirmed. In this manner, loss of dependency is calculated at Rs. 6,30,000/- [4000 x12x14= 6,72,000 + 1,68,000 (25%)= 8,40,000 –

2,10,000 (1/4th)].

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

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs.7,00,000/- and compensation allowed is reduced to the extent of Rs. 7,80,200/- (14,80,200-7,00,000).The insurance company shall be entitle to recover the excess amount, if paid, by filing an appropriate application before the Tribunal.

Coming to the driving licence, driver-cum-owner of offending vehicle neither contested the proceedings before the Tribunal nor caused appearance before this court in order to say something about driving licence. As the driver-cum-owner did not supply particulars of driving licence, if any, possessed by him, the insurance company has been rendered handicap to get licence verified in order to know about its correctness or otherwise. In the given circumstances, it would be presumed that the insured/driver did not possess driving licence on the date of accident, thus, the insured is guilty of violating the terms and conditions of policy that constitutes a defence in favour of the insurer. The insurance company shall be entitle to recover the amount from Jagjit Singh- respondent No. 5 after payment of compensation to the claimants.

Counsel for the insurance company has also made a submission that Tribunal has allowed interest @ 12% per annum from the date of filing of claim application till realization. The insurance company has not produced any evidence before the court with regard to the bank rate of interest at the time of passing of award. I do not find any reason to interfere with rate of interest allowed by the Tribunal.

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

(Rekha Mittal)
Judge

20.9.2019.
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No