IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 29.04.2019

FAO 1468 of 2016 (O&M)

Meera Devi *....Appellant*

versus

Surinder Taati and others *....respondents*

FAO 2712 of 2016 (O&M)

National Insurance Company Limited *........Appellant*

Versus

Meera Devi and others *.......Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sameer S Tiwari, Advocate
for the claimant

Mr. Ravinder Arora, Advocate
for the insurance Company

Mr. Rajeev Dev Sharma, Advocate
for the owner and driver of offending vehicle

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Rekha Mittal, J. (Oral)

CM 10094 CII of 2016 in FAO 2712 of 2016

Prayer in this application is for condoning delay of 71 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of

71 days in filing the appeal stands condoned.

Main case

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 15.10.2015 passed by the Motor Accidents Claims Tribunal, Pathankot (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Raveena in a motor vehicular accident that took place on 03.11.2014.

FAO No.2712 of 2016 has been filed by the insurance company, whereas FAO No.1468 of 2016 has been preferred by the claimant seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to challenge quantum of compensation as well as findings of the Tribunal on the question of driving licence.

The Tribunal awarded Rs.26,20,000/-, detailed hereunder:-

Annual income of the deceased	Rs.3,00,000/-
Deduction for personal expenses	1/3rd
Multiplier	13
Loss of dependency	Rs.26,00,000/-
Loss of love and affection for family	Rs.7,500/-
Loss to estate	Rs.7,500/-
Funeral expenses	Rs.5,000/-

Counsel for the appellant/claimant would argue that the appellant may be allowed benefit of addition in income for future prospects and appropriate multiplier on the basis of age of deceased. It is further argued that the deceased was a student of Engineering at the time of unfortunate occurrence. Adequate compensation may be allowed under conventional heads.

Counsel for the insurance company, on the contrary, would argue that income of deceased assessed by the Tribunal is on higher side and admissible deduction for personal and living expenses should be 50%. 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 of the Code of Civil Procedure for producing verification report (Annexure A1) that proves that Surinder Taati, driver of offending vehicle was having licence to drive a light motor vehicle but he was driving Truck bearing No. HR 55 M 9847, a transport vehicle at the time of occurrence, therefore, he was not competent to drive the vehicle in question. It is argued that the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimant.

The Tribunal, in para 4 of the award, has noticed the documents produced by the claimant and her witnesses *i.e.* job offer letter Ex.P3, salary detail Ex.P4, diploma certificate Ex.P5, Certificates of College Principal Ex.P6 and P7, detail mark sheets Ex.P8 to P14, Copy of Aadhar Card, Ex.P15 and certificates of participation of deceased in extra curricular activities Ex.P16 to P21.

Perusal of the aforesaid documents would reveal that the deceased was diploma holder in Engineering from Aman Bhalla Institute of Engineering, Village Kotli, Tehsil and District Pathankot. Later, she joined B.Tech (Computer Science) course and was in third semester of said course as per certificate dated 17.11.2014 issued by the aforesaid institute. The claimant has not placed on record any document with regard to academic performance of the deceased in B. Tech (Computer Science).

Admittedly, the claimant did not examine a witness to prove offer letter Ex.P3 and document Ex.P4, purported to be issued by Airsoft Infosys. Meera, the mother of the deceased had stated that Raveena never joined the job with Airsoft Infosys in response to document Ex.P3. The Tribunal has assessed income of the deceased at Rs.3,00,000/- per annum by relying upon judgment of Hon'ble the Supreme Court ***Ashvinbhai Jayantilal Modi v Ramkaran Ramchandra Sharma, (2015) 2 SCC 180*** wherein compensation with regard to a boy of 19 years, who was a medical student was assessed. There is nothing on record suggestive of the fact as to what is the status of Aman Bhalla Institute of Engineering and Technology, Kotli, Pathankot from which the deceased passed diploma in Engineering and was a student of third year in B.Tech (Computer Science). Perusal of documents with regard to academic performance of the deceased in diploma would indicate that she cannot be termed as a brilliant student. On the contrary, she can be said to be more than a mediocre. This Court can take judicial notice of the fact that several engineering graduates from such like private institutes do not get employment for number of years. Taking a cumulative view of the materials on record, it is difficult to sustain findings of the Tribunal assessing income of deceased at Rs.3,00,000/- per annum.

The Tribunal has rightly refused to accept plea of the claimant that the deceased was doing tuition work and thereby had an income. It is necessary to mention that testimony of Meera Devi is not free from doubt. In her examination-in-chief, she had stated that her husband is missing for the past more than seven years and the deceased was the only bread winner of the family. However, in her cross examination, she would depose that her husband is not residing in the house for the last number of years. Her son is doing nothing and studied upto +2 and also stated that her son is doing private job at one cloth shop but she did not disclose his salary. Statement of Meera in this regard gets falsified and belied in view of the facts elicited in cross examination of Raghubir Singh son of the claimant (PW2) as he stated in his cross examination that he is not doing any other work except studying in B.Tech. Taking a cumulative view of the aforesaid, notional income of the deceased is assessed at Rs.10,000.00 per month. The claimant shall be entitle to addition in income for future prospects at the rate of 40%. The Tribunal has applied deduction for personal and living expenses to the tune of 1/3rd. Meera Devi, mother of the deceased is the only claimant in the case, therefore, admissible deduction for personal and living expenses of the deceased would be 50%. In this context, reference can be made to judgment of Hon'ble the Supreme Court ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) R.C.R. (Civil)*** *77*.

The Tribunal has applied multiplier of 13 for computing loss of dependency. Taking into consideration age of the deceased, who was less than 25 years, admissible multiplier is 18. As such, loss of dependency is calculated at Rs.15,12,000.00 (Rs.21,60,000.00 *i.e.* 10,000 x 12 x 18 + Rs.8,64,000.00 (40% addition) – Rs.15,12,000.00 (50% deduction).

Under conventional heads, claimant shall be entitle to Rs.30,000.00 (Rs.15,000.00 each qua loss to estate and funeral expenses), admissible in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company***

Limited and another, 2018 AIR (SC) 5034.

Total compensation is Rs.15,42,000.00 and compensation assessed by the Tribunal is reduced to the extent of Rs.10,78,000.00 (Rs.26,20,000.00 – Rs.15,42,000.00). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The plea of the insurance company with regard to driving licence possessed by Surinder Taati, the insurance company has filed an application for additional evidence to place on record document Annexure A-1, purported to be a report issued by the office of District Transport Officer, Banka (Bihar). Annexure A-1 is a copy of the report. The same is not *per se* admissible in evidence and requires to be proved on the basis of original records. That being so, there is no merit in contention of the insurance company that driver was not possessing a valid or effective licence to drive the vehicle in question. As such, findings of the Tribunal on issue No. 4 are liable to be affirmed and ordered accordingly.

In view of what has been discussed hereinbefore, both the appeals stand disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

29.04.2019
Mohan Bimbra

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