IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 5771 of 2013(O&M)
Date of Decision: 11.04.2019

ICICI Lombard General Insurance Company Limited

......Appellant.

Versus

Raj Kumari and others

...... Respondents

AND

F.A.O. No. 810 of 2014(O&M)

Raj Kumari

......Appellant.

Versus

Krishan Kumar and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vijay Pal, Advocate
for the appellant (inFAO no. 5771 of 2013 and
for respondent no.3 in FAO No. 810 of 2014)

Mr. S.K.Yadav, Advocate
for the appellant (in FAO No. 810 of 2014 and
for respondent no.1 in FAO No 5771 of 2013).

Mr. Shashikant Gupta, Advocate
for respondent no. 2 (in FAO No. 5771 of 2013 and
for respondent no.4 in FAO No. 810 of 2014)

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LISA GILL, J (Oral).

This judgement shall dispose of FAO No.5771 of 2013 filed by the appellant-Insurance Company as well as FAO No. 810 of 2014 filed by the appellants-claimants as both the appeals arise from award dated 24.08.2013, passed by the learned Motor Accident Claims Tribunal, Narnaul (for short 'Tribunal'). For the sake of convenience, facts are being extracted from FAO No. 5771 of 2013.

As per averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'Act'), Bimal Shyam Sharma alongwith Om Parkash son of Prabhati Lal, on 25.12.2011 were going from Mahendergarh towards Kanina on a motorcycle bearing registration no. HR-26/AN-3793, which was driven by Bimal Shyam Sharma while observing all the traffic rules. When, they reached near Vikas Hotel, Majra Khurd, the offending vehicle i.e. car bearing registration no. HR-26-AP-8680 driven by respondent no.1 in a rash and negligent manner came from the opposite side at a very high speed and struck against their motorcycle from the front side. As a result thereof, Bimal Shyam Sharma sustained multiple grievous, fatal injuries on vital parts of his body and died at the spot. Postmortem was conducted at CHC, Mahendergarh. FIR no. 570 dated 25.12.2001 (Ex.P-3) was registered, in this respect. Compensation was claimed.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent no.1-Krishan Kumar.

Income of deceased-Bimal Shyam Sharma, aged 28 years, was assessed as ₹38,125/- per month as it was proved on record that he was working with Honda Motorcycle and Scooter India Private Limited., IMT Manesar, Gurgaon. While affording an increment of 50%, income of the deceased was assessed as ₹57,187/- per month. Deduction of 1/ 3rd was effected. Multiplier of 17 was applied by the learned tribunal. A sum of ₹5,000/- was awarded towards transportation, besides ₹25,000/- was awarded on account of funeral expenses, ₹.1,00,000/- was awarded on account of loss of consortium to respondent no.4-Widow. Learned tribunal awarded a sum of ₹71,22,678/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realisation of the amount to the appellant-claimant-Raj Kumari and respondent no.4-widow of the deceased.

Appellant-Insurance Company is aggrieved of the quantum of compensation awarded by the learned tribunal. Liability of the Insurance Company has not been challenged.

Learned counsel for the appellant-Insurance Company vehemently argues that increment of 50% on account of future prospects has been wrongly awarded and excessive compensation under the conventional heads has been awarded by the learned tribunal. Learned counsel for the appellant-Insurance company submits that as the deceased was in a private job, therefore, it is only an increment of 40% which should be afforded. It is thus prayed that the appeal filed by the appellant-Insurance Company be allowed.

Claimants on the other hand seek enhancement of the compensation primarily on the ground that deduction on account of income tax has not been correctly effected. Learned counsel for the claimant, however fairly states that compensation under the conventional heads may be re-worked in terms of the judgements of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors. 2017(4) R.C.R.(Civil) 1009** and **Magma General Insurance Company Limited Vs. Nanu Ram @ Chuhuru Ram and others, 2018(4) R.C.R (Civil) 333.**

I have perused the files and heard learned counsel for the parties.

There is no dispute regarding the death of Bimal Shyam Sharma in a motor vehicle accident which took place on 25.12.2011 in the manner claimed. Deceased-Bimal Shyam Sharma, is proved to have been working with Honda Motorcycle and Scooter India Private Limited., IMT Manesar, Gurgaon. PW-1-Kamal Singh, Senior Executive Industrial Relations, Honda Motorcycle and Scooter India Private Limtied, Gurgaon, proved the offer of appointment Ex.PW1/B, which proves that deceased was working with the said company from 01.07.2004 till his death i.e. 25.12.2011. PW-1-Kamal Singh, specifically deposed that the deceased was a regular employee of the company. He specifically denied that suggestion to the effect that the deceased was a temporary employee. There is nothing on record to disprove the stand of the claimants that the deceased was working as a permanent employee with the said company. There is no dispute regarding monthly income of the deceased as assessed by the learned tribunal i.e. ₹38,125/-. Learned tribunal after affording an increment of 50% proceeded to deduct the income tax on the annual income so calculated at the rate of ₹6,86,250/-. In this manner, it was observed that exemption from income tax for the financial year 2011-12 was ₹1,80,000/- and for income exceeding ₹1,80,000/- up to ₹5 lakh was 10%, from ₹5 lakh to ₹8 Lakh, income tax was charged at the rate of 20%. After deducting the income tax as above, net annual income of the deceased was assessed as ₹6,17,000/-.

Learned counsel for the respondent-Insurance Company is unable to deny that even as per the observations of the Hon'ble Supreme

Court in **Pranay Sethi's** case **(Supra),** tax deduction will have to be effected on the salary prior to addition of the increment. It is specifically observed in **Paranay Sethi's** case (Supra) that 'income' means, the actual income after deduction of income tax. ₹15,000/- instead of ₹25,000/- and ₹40,000/- instead of ₹1,00,000/- towards funeral expenses and loss of consortium respectively, is awarded. ₹15,000/- is awarded towards loss of estate.

Compensation towards the claimants is thus re-worked as under:-

Sr. No.	**Heads of Claim**	**Amount**
1.	Income	₹38,125/- p.m. and ₹4,57,500/- (₹38,125x12)
2.	Tax deduction	₹2,77,500 (₹4,57500 – ₹1,80,000)
3.	Income Tax at the rate of 10%	₹2,77,500 *10= ₹27,750/-
4.	Balance	₹4,57,500 – ₹27,750= ₹4,29,750/-
5.	Addition of 50% on account of future prospects	₹6,44,625/- (₹2,29750 +₹2,14,875/-)
6.	Deduction of 1/3rd	₹4,29,750/- (₹6,44,625*3)
7.	Total dependency after applying a multiplier of 17	(₹4,29,750 x 17= ₹73,05,750/-
8.	Loss of consortium	₹40,000/- (instead of ₹1 lakh)
9.	Loss of estate	₹15,000/-
10.	Funeral expenses	₹15,000/- (instead of ₹25,000/-
	Grand Total	**₹73,75,750/-**

Interest at the rate of 7.5% per annum on the enhanced compensation amount is awarded from the date of filing of petition till realization. Needless to say that the amount, if any, already disbursed to the claimant and respondent Anu Sharma wd/o Bimal Shyam Sharma shall stand deducted. Directions of the Tribunal in respect to manner of apportionment and disbursement of compensation, shall enure.

With the abovesaid modification in the amount of compensation, both the appeals are disposed of.

[LISA GILL]
Judge

11.04.2019
s.khan

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