IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 FAO-2755-2016 (O&M)

Date of decision: 26.09.2019

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

KRISHNA DEVI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for the appellant.
None for respondents No.1 and 2.
Mr. Yashjot S. Dhaliwal, Advocate for respondents No.3 and 4.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 01.02.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra whereby compensation has been assessed on account of death of Sanchit Kumar in a motor vehicular accident that took place on 29.09.2014.

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and on the question of driving licence.

The Tribunal awarded Rs.14,87,200/-, detailed hereunder:-

Monthly income of the deceased	Rs.8100/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.13,12,200/-
Expenses on funeral & transportation	Rs.25,000/-
Loss of estate	Rs.1,00,000/-
Loss of love and affection to mother	Rs.50,000/-

Counsel would argue that income of the deceased has been assessed on the basis of Deputy Commissioner's rates meant for payment to employees out of contingency fund. Addition in income for future prospects and compensation allowed under conventional heads may be modified 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 licence possessed by the driver was issued by RTO, Kohima on 07.04.2012. It is argued that as driver was resident of Village Dinawal, Tehsil Khadoor

Sahib, District Amritsar, he was not competent to obtain a licence from Kohima, in view of the provisions of Section 9 of the Motor Vehicles Act, 1988.

There is no representation on behalf of respondents No.1 and 2, despite service.

Counsel representing respondents No.3 and 4 has supported findings of the Tribunal on the question of driving licence on the basis whereof the insurance company has been directed to indemnify the insured by discharging its liability under contract of insurance.

The plea of claimants is that deceased was helping his father in agricultural and dairy business but claimants did not produce any document with regard to land owned by father of the deceased. Similarly, they could not produce satisfactory evidence on record with regard to dairy business carried by father of the deceased. As has been rightly argued by counsel for the insurance company, Deputy Commissioner's rates are meant for payment to employees out of contingency fund. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.9,07,200/- [(6000 x 12 x 18) + (40% future prospects) – (50% 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.9,37,200/- and compensation assessed by the Tribunal is reduced to the extent of Rs.5,50,000/- (14,87,200 - 9,37,200). 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 issue No.2 as to whether driver of the offending vehicle was duly licensed to drive the offending vehicle. The sole submission made by counsel for the insurance company is that since Darshan Singh, driver belongs to village Dinewal in District Amritsar, he was not competent to submit an application before an authority in Nagaland for issuance of licence. The insurance company did not call upon driver of the vehicle to appear in the witness box to explain the circumstances under which he obtained licence from an authority in Nagaland. In the given circumstances, the insurance company cannot be heard to say that since address of Darshan Singh is of village Dinewal, he was either not resident of Nagaland or could not obtain a licence from an authority at Kohima. In this view of the matter, I do not find an error much less perversity in findings of the Tribunal on issue No.2.

No other point has been raised.

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

26.09.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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