IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3179-2016 (O&M)

Date of decision: 29.01.2019

RELIANCE GENERAL INSURANCE CO. LTD. ... Appellant

Versus

SHALU AND ORS. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate
for the insurance company.

None for respondents No.1 to 3.

Mr. Rajesh Dhankar, Advocate
for respondent No.4.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 27.04.2016 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Daya Kishan in a motor vehicular accident that took place on 16.03.2015.

Counsel for the insurance company would inform that the appeal has been preferred on the question of quantum of compensation and driving licence possessed by the deceased being not valid.

The Tribunal has awarded compensation of Rs.18,45,000/-, detailed hereunder:-

1. Monthly income of the deceased Rs.8000/-

2. Addition in income for future prospects	50%
3. Multiplier	15
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.16,20,000/-
6. Expenses on transportation and cremation	Rs.25,000/-
7. Loss of consortium to the widow	Rs.1,00,000/-
8. Loss of love, affection and guidance to minor children	Rs.1,00,000/-

Counsel for the insurance company would argue that income of the deceased @ Rs.8000/- per month has been assessed on the basis of Deputy Commissioner's (DC) rates, meant for payment to employees out of contingency fund. The minimum wage at the relevant time was approximately Rs.6000/- per month. It is further argued that addition in income for future prospects is liable to be restricted to 40% and conventional heads to the tune of Rs.70,000/-. The Tribunal has wrongly applied cut of 1/4th for personal and living expenses but the same should be 1/3rd as claim has been preferred by the widow and two minor children of the deceased.

With regard to driving licence, it is urged that as the deceased was travelling on a motorcycle and did not possess a valid licence, findings of the Tribunal on issue No.1 are liable to be modified.

There is no representation of behalf of respondents No.1 to 3, earlier being represented by a counsel.

Counsel for respondent No.4 has not made any submission to counter the plea raised by the insurance company.

I have heard counsel for the parties, perused the paper book particularly the award impugned.

The plea of claimants is that deceased was running a sweet shop with his brother Sudershan under the name and style 'M/s Raj Khoya Bhandar, Dinod Gate, Bhiwani' and earning Rs.50,000/- per month. They examined Sudershan PW2 who reiterated the version broughtforth by the claimants with regard to avocation and income of the deceased. The Tribunal, in para 27 of the award, has noticed that claimants have not produced income tax records relating to the deceased. They have not produced any food licence vide which Daya Kishan and Sudershan were authorised to run the business of sweet shop. Perusal of the award would reveal that the claimants failed to produce any documentary evidence in respect of M/s Raj Khoya Bhandar, Dinod Gate, Bhiwani in order to establish their plea that the deceased was a partner in the said business or qua income of the aforesaid concern.

The Tribunal has assessed income of the deceased on the basis of Deputy Commissioner's rates. As has rightly been argued by counsel for the appellant, Deputy Commissioner's (DC) 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, income of the deceased is assessed at Rs.6000/- per month. Addition in income for future prospects would be 40% in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017**

SCC 1270. The Tribunal has rightly applied multiplier of 15 as the deceased was less than 40 years of age. However, admissible deduction for personal and living expenses of the deceased would be 1/3rd as the claim has been preferred by widow and two minor children of the deceased. In view of the above, loss of dependency is calculated at Rs.10,08,000/- [(6000 x 12 x 15) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

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

Total compensation is Rs.10,78,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.7,67,000/- (18,45,000 - 10,78,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

So far as plea of the insurance company with regard to driving licence possessed by the deceased, the mere fact that licence possessed by the deceased was not found valid is not a ground to attribute rashness and negligence to the deceased. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Sudhir Kumar Rana Vs. Surinder Singh and ors., 2008(3) RCR (Civil) 265.**

No other point has been raised.

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

(REKHA MITTAL)
JUDGE

29.01.2019
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No