IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

239 FAO-3247-2016 (O&M)

Date of decision: 30.01.2019

CHOLAMANDALAM MS GENERAL INSURANCE COMPANY LTD

... Appellant

Versus

ANKIT KUMAR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Rajneesh Malhotra, Advocate for the appellant.
Mr. S.K. Yadav, Advocate for respondents No.1 to 3.
Mr. Mukesh Yadav, Advocate for respondent No.4.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 15.02.2016 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been assessed on account of death of Parveen Kumar in a motor vehicular accident that took place on 07.09.2014.

The Tribunal has awarded compensation of Rs.7,19,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.3300/-
2. Addition in income for future prospects	50%
3. Multiplier	15
4. Deduction for personal expenses	$1/3^{rd}$
5. Loss of dependency	Rs.5,94,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of love and affection	Rs.25,000/-

Counsel for the insurance company has assailed the award primarily on two counts. It is argued that as the deceased was not paid driver of the insured/owner of trolla HR-63-8717, the insurance company cannot be saddled with liability to pay compensation as the insurance company is not liable to indemnify for death of the insured or a borrower of his vehicle.

Another submission made by counsel is that application for compensation has been filed under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') and compensation is liable to be computed in consonance with the structured formula laid down in Second Schedule appended to Section 163-A of the Act.

Counsel representing the claimants has supported assessment of compensation and so also liability of the insurance company to pay compensation to the claimants.

Counsel for the insurance company has failed to point out any such plea raised in the reply that Parveen Kumar (deceased) was a borrower of the vehicle in question or the insurance company is not liable to pay compensation on this premise. A factual controversy cannot be allowed to be raised for the first time in appeal particularly in the circumstances that the appellant has not filed an application seeking amendment of the written statement/reply. That being so, first contention raised by the insurance company is devoid of merit and accordingly rejected.

This brings the Court to quantum of compensation assessed by the Tribunal. Counsel for the claimants has not disputed that claimants filed application for grant of compensation by invoking Section 163-A of the Act. There cannot be dispute that in an application under Section 163-A of the Act, compensation is to be assessed on the basis of structured formula envisaged in Second Schedule appended thereto. The Tribunal has rightly assessed income of the deceased at Rs.3300/- per month and deducted 1/3rd for personal expenses. However, addition in income for future prospects allowed by the Tribunal cannot be allowed to sustain. In view of age of the deceased when examined in the light of Second Schedule, admissible multiplier is 16. In this manner, loss of dependency is calculated at Rs.4,22,400/- [(3300 x 12 x 16) – (1/3rd deduction for personal expenses)]

Under conventional heads, claimants shall be entitle to Rs.4500/- i.e Rs.2000/- for expenses on funeral and Rs.2500/- for loss to estate.

Total compensation is Rs.4,26,900/- and compensation assessed by the Tribunal is reduced to the extent of Rs.2,92,100/- (7,19,000 - 4,26,900). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

30.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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