IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.02.2019

FAO No.4325 of 2015 (O&M)

Reliance General Insurance Co. Ltd. ... Appellant

Versus

Smt. Nisha @ Balkesh and others ... Respondents

FAO No.5397 of 2015 (O&M)

Smt. Nisha @ Balkesh and others ... Appellants

Versus

Sampat Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RK Bashamboo, Advocate for the insurance company.

Mr. Sushil Bhardwaj, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4325 and 5397 of 2015 as these have emerged out of the same award dated 30.03.2015 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Arjun in a motor vehicular accident that took place on 12.09.2013.

FAO No.4325 of 2015 has been filed by the Reliance General Insurance Co. Ltd. whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would fairly inform that the appeal has been preferred only to assail quantum of compensation assessed by the Tribunal.

The Tribunal has awarded Rs.18,70,875/-, 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 funeral	Rs.25,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Expenses incurred on treatment of the deceased	Rs.1,25,875/-

Counsel for the insurance company would argue that income of the deceased is wrongly assessed at Rs.8000/- per month but minimum wage of an unskilled labour at the relevant time was less than Rs.5500/- per month. Addition in income for future prospects and compensation under conventional heads have also been challenged by relying upon judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for the claimants would state that claimants No.1 to 3 may be allowed loss of consortium @ Rs.40,000/- each in the light of judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333**.

The plea of claimants is that the deceased was doing the work of supply of tie and belt etc. as per requirements of the schools thereby earning Rs.25,000/- per month. Counsel for the claimants has failed to point out materials on record to establish this plea of the claimants. The bald statement of widow of the deceased in this regard is not sufficient to determine income of the deceased. Taking a clue from the notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.5500/- 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.10,39,500/- [(5500 x 12 x 15) + (40% future prospects) – ($1/4^{th}$ 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/-

The amount of Rs.1,25,875/- towards medical expenses allowed by the Tribunal is affirmed.

The plea of claimants for grant of loss of consortium to each of claimants No.1 to 3 in the light of judgment in **Magma General Insurance Co. Ltd.'s case (supra)** is not tenable in view of decision by the Constitution Bench in **Pranay Sethi and others's case(supra)** and decision by a three Judge Bench in **Sebastiani Lakra and others's case (supra)** subsequent to the decision in **Magma General Insurance Co. Ltd.'s case (supra).**

Total compensation is Rs.12,35,375/- and compensation allowed by the Tribunal is reduced to the extent of Rs.6,35,500/- (18,70,875 – 12,35,375). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal. All other terms and conditions of the award shall remain intact.

The appeals are disposed of in the aforesaid terms.

(REKHA MITTAL)
28.02.2019 **JUDGE**
ashok

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