IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

246 FAO-3327-2016 (O&M)

Date of decision: 17.01.2019

NEW INDIA ASSURANCE CO. LTD. ... Appellant

Versus

RADHA DEVI & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the appellant.
Mr. A.S. Khinda, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 12.04.2016 passed by the Motor Accidents Claims Tribunal, Kapurthala whereby compensation has been assessed on account of death of Rajinder Kumar in a motor vehicular accident that took place on 05.06.2015.

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

The Tribunal has awarded compensation of Rs.32,88,300/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.31,632/- (rounded of to Rs.31,700/-)
2. Multiplier	11
3. Deduction for personal expenses	$1/4^{th}$
4. Loss of dependency	Rs.31,38,300/-
5. Loss of estate, funeral expenses, transportation charges etc.	Rs.50,000/-
6. Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company would state that compensation is liable to be assessed by applying split multiplier. However, in the light of judgment of this Court **United India Insurance Co. Ltd. Vs. Saroj and others, FAO No.2931 of 2016 and other connected case, decided on 07.09.2017,** contention of the insurance company for applying split multiplier is not tenable and accordingly rejected.

It is further argued that the claimants examined Anamika Sharma, office Superintendent, SSE/Pway/JUC to prove salary of the deceased. The witness produced on record document Ex.PW4/A wherein gross salary of the deceased in the month of April, 2015 is shown to be Rs.31,632/- but for the month of May, 2015 it is Rs.27,988/-. Anamika Sharma in his oral testimony has deposed that deceased was drawing salary of Rs.28,000/- per month. There is no clarification available on record as to why salary of the deceased did not include NH, ADA, Government NPS and an amount of Rs.144 under some other head in his salary for the month of May, 2015.

Taking into consideration salary for the month of May, 2015 and for a period of 5 days for June, 2015 along with testimony of Anamika Sharma, salary of the deceased would be taken at Rs.28,000/- per month. The annual income comes to Rs.3,36,000/-. After deducing income tax of Rs.8600/-, net annual income is Rs.3,27,400/-. Claimants shall be entitle to addition in income for future prospects @ 15%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.31,06,207/- [(3,27,400 x 11) + (15% future prospects) – (1/4th 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 **Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, AIR 2018 SC 5034** and **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, 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.31,76,207/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,12,093/- (32,88,300 – 31,76,207). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

17.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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