IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3886 of 2016(O&M)

Date of decision: 21.8.2019

TATA AIG General Insurance Co. ltd. …..Appellant

VERSUS

Kamla Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

Mr. Sanjeev K. Arora, Advocate for respondents No.1 to 5.

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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 28.01.2016 passed by the Motor Accidents Claims Tribunal, S.A.S. Nagar (Mohali) (in short 'the Tribunal') whereby compensation has been assessed on account of death of Mohinder Singh in a motor vehicular accident that took place on 18.08.2013.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.17,63,000/- detailed hereunder:-

Monthly income of the deceased	Rs.10000/-
Addition in income for future Prospects	30%
Deduction for personal expenses	1/4th
Multiplier	14
Loss of dependency	Rs.16,38,000/-
Funeral expenses	Rs.25000/-
Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company would argue that income of the deceased assessed by the Tribunal is based on assumptions and presumptions and the same is much more than minimum wage available in August 2013. Addition in income for future prospects should be 25% and conventional heads may be restricted to Rs.70,000/-. In addition, it is argued that claimants No.4 and 5 are major sons of the deceased, therefore, admissible deduction for personal expenses should be 1/3rd in place of 1/4th.

Counsel representing the claimants/respondents, on the contrary, has supported assessment made by the Tribunal with the submission that the same is based upon materials on record.

The Tribunal in para 14 of the award has noticed that Kamla Devi PW-1 in her deposition had stated that her husband was earning Rs.10,000/- per month. Even otherwise, a labourer can also fetch Rs.300/- to Rs.350/- per day and accordingly income was assessed at Rs.10,000/- per month. Indisputably, testimony of Kamla Devi with regard to income of the deceased does not find corroboration from an independent source much less documentary evidence. It is also difficult to fathom as to on what basis, the Tribunal has assumed that a labourer can earn Rs.300/- to Rs.350/- per day. In absence of the claimants adducing sufficient evidence with regard to avocation and income of the deceased, the Court can derive some clue from notification issued by the State fixing minimum wage. As per the notification issued by the Labour Department Punjab, the minimum wage at the relevant time qua an unskilled labour was Rs.5695/- per month. Taking into consideration the notification, it is difficult to sustain findings of the Tribunal assessing income of the deceased at Rs.10,000/- per month. Accordingly, his income is assessed at Rs.5,700/- per month.

Claimants shall be entitle to addition in income for future prospects at the rate of 25%. Multiplier applied by the Tribunal is correct and affirmed.

Application for compensation has been filed by the widow, parents and major sons of the deceased. There is nothing on record suggestive of the fact that major sons of the deceased were not dependent upon income of the deceased. That being so, it is difficult to accept contention of the insurance company that deduction for personal expenses should be 1/3rd in place of 1/4th allowed by the Tribunal. In this manner, loss of dependency comes to Rs.8,97,750/- [Rs.9,57,600/- (Rs.5700 x 12 x 14) + Rs.2,39,400/- (25% addition towards future prospects) – Rs.2,99,250/- (1/4th deduction towards personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

In view of the above, total compensation is Rs.9,67,750/- and compensation awarded by the Tribunal is reduced to the extent of Rs.7,95,250/- (Rs.17,63,000/- - Rs.9,67,750/-). 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.

AUGUST 21, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no
Whether reportable : yes/no