IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

245 FAO-4169-2016 (O&M)

Date of decision: 29.03.2019

HDFC ERGO GENERAL INSURANCE CO. LTD ... Appellant

Versus

SUNIL KUMAR AND ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Pradeep Kumar, Advocate for the appellant.
Mr. Rohit Rana, Advocate for the claimants.
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REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 23.03.2016 passed by the Motor Accidents Claims Tribunal, Faridabad whereby compensation has been assessed on account of death of Dharmwati in a motor vehicular accident that took place on 24.05.2014.

The Tribunal has awarded Rs.17,40,000/-, detailed hereunder:-

1. Monthly value of services of the deceased	Rs.6000/-
2. Addition in income for future prospects	50%
3. Multiplier	15
4. Deduction for personal expenses	1/4th
5. Loss of dependency	Rs.12,15,000/-
6. Expenses on funeral	Rs.25,000/-
7. Loss of estate and consortium	Rs.1,00,000/-
8. Loss of love and affection to claimants No.2 to 4	Rs.4,00,000/- (Rs.1 lakh each)

Counsel for the appellant-insurance company would argue that as husband of the deceased cannot be held to be dependent upon earnings of his wife, deduction for personal expenses should be 1/3rd. Addition in income for future prospects should be restricted to 40% and compensation under conventional heads to Rs.55,000/-.

Counsel representing the claimants, on the contrary, would urge that besides income of the deceased assessed by the Tribunal, claimants are entitle to loss of services of the deceased rendered to her family.

The plea of claimants is that the deceased was running boutique under the name and style of M/s Impress Boutique in East Chawla Colony, Ballabgarh thereby earning Rs.20,000 to Rs.25,000/- per month. To substantiate plea of the claimants in this regard, Sunil Kumar and Veena

Rani claimants No.1 and 2 appeared in the witness box. The Tribunal has held that oral testimony of Veena Rani and Sunil Kumar cannot be accepted as a gospel truth. There is nothing on record suggestive of the fact that any documentary evidence was produced on record with regard to deceased running a boutique much less her earning from any such business. In the given circumstances, value of services of the deceased would be assessed as a housemaker. Taking a clue from notification issued by the State of Haryana at the relevant time coupled with observations made by Hon'ble the Supreme Court in **Arun Kumar Aggarwal and another Vs. National Insurance Company and others, 2010(3) RCR (Civil) 827,** value of services of the deceased is assessed at Rs.9000/- per month. There would be no deduction for personal expenses in the light of Division Bench judgment of this Court **Paramjit Singh and another Vs. Dilbagh Singh @ Bagga and others, 2013(3) Law Herald 2730**. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.16,20,000/- (9000 x 12 x 15).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.55,000/- i.e. Rs.40,000/- for loss of consortium and Rs.15,000/- for expenses on funeral.

Total compensation is Rs.16,75,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.65,000/- (17,40,000 - 16,75,000). 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.

29.03.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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