IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision:18.03.2019

1. FAO No.5414 of 2015 (O&M)

United India Insurance Co. Ltd. ….. Appellant

Versus

Asgar Ali and others ….. Respondents

2. FAO No.5470 of 2015 (O&M)

Asgar Ali ….. Appellant

Versus

Yadvinder Singh and others ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Rajesh Kumar Sharma, Advocate for appellant in FAO No.5414 of 2015 and respondent No.3 in FAO No.5470 of 2015.

Mr. R.S. Budhwar, Advocate for respondent No.1 to 5 in FAO No.5414 of 2015 and claimant/appellant in FAO No.5470 of 2015.

None for remaining respondents in both appeals.

***

B.S. WALIA, J. (ORAL).,

[1] This order shall decide FAO No.5414 of 2015 filed by the Insurance Company seeking reduction of compensation awarded by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') and FAO No.5470 of 2015 filed by the claimant-Asgar

Ali seeking enhancement of compensation awarded by the learned Tribunal. Facts of the case are being taken from FAO No.5414 of 2015.

[2] Appeal (i.e. FAO No.5414 of 2015) has been filed by the Insurance Company challenging award of compensation of ₹ 15,29,000/- by the learned Tribunal along with interest @ 9% per annum on account of death of Smt. Zule Khan, wife of Asgar Ali (respondent No.1) in a motor vehicular accident on 16.11.2014.

[3] Precise submission of learned counsel for the appellant/Insurance Company is that notional assessment of services being provided by the deceased-housewife at ₹ 9000/- per month is on the higher side, besides, ₹ 1,00,000/- awarded on account of loss of consortium and ₹ 25,000/- on account of funeral expenses was liable to be scaled down to ₹ 40,000/- and ₹ 15,000/- respectively.

[4] Per contra, learned counsel for respondent No.1/claimant while not pressing the appeal (FAO No.5470 of 2015) for enhancement prayed for sustaining the impugned award to the extent of taking notional value of services rendered by the deceased-housewife at ₹ 9,000/- per month, besides, award of ₹ 15,000/- on account of funeral expenses, ₹ 15,000/- on account of loss of estate and ₹ 40,000/- on account of loss of consortium.

[5] Learned counsel for respondent No.1/claimant has relied upon the decision of this Court in case titled as **United India Insurance Company Ltd. v. Sube Singh and others,** decided on 15.01.2014 in FAO No.218 of 2014 involving death of a housewife on 23.11.2012 with the deceased – housewife being 40 years of age. Learned counsel contends that in the said case the deceased-housewife was equated with a skilled worker and her contribution to the family was assessed at ₹ 9000/- per month by the Tribunal and on a challenge by the United India Insurance

Company Ltd., the Co-ordinate Bench by taking note of decision of Hon'ble the Supreme Court in **Lata Wadhwa and others v. State of Bihar and others reported as 2001 (4) RCR (Civil) 673** i.e. a case pertaining to an accident of the year 1981 wherein Hon'ble the Supreme Court had evaluated the contribution of a housewife at ₹ 3000/- per month, dismissed the appeal of the United India Insurance Company Ltd. on the ground that the accident in the instant case had taken place after 23 years from the date of accident in Lata Wadhwa's case , therefore, to label a housewife as a 'skilled worker' alone would not do complete justice to her multifarious role as a home manager. Therefore, keeping in view the lapse of 23 years between the accident in the case of Lata Wadhwa (Supra) and the accident in Sube Singh's case (Supra) it was held that a housewife is more than a skilled worker, therefore, it would not be unreasonable to estimate the contribution of the deceased at a higher figure. Therefore, the prayer of the United India Insurance Company Ltd. for reducing the compensation was rejected and the appeal dismissed.

[6] Learned counsel for respondent No.1/claimant further contends that the decision of the Co-ordinate Bench in Sube Singh's case (Supra) was challenged before Hon'ble the Supreme Court and vide order dated 08.09.2014, SLP No.14334 of 2014 filed by the United India Insurance Co. Ltd. against the order dated 15.01.2014 passed in FAO No.218 of 2014, was dismissed by observing that no ground for interference was made out.

[7] In the light of the position as noted above, the prayer of the Insurance Company for reduction of the monthly contribution of the deceased-housewife from ₹ 9000/- as awarded by the learned Tribunal is rejected.

[8] As regards the plea for deduction of personal expenses of the deceased, reference can be made to the decision of a Co-ordinate Bench of this Court in **Cholamandalam MS General Insurance Company Limited v. Lakhmi Chand and others, decided on 26.02.2015 in FAO No.3483 of 2013** wherein it was held that where income is notional as in the case of a student or a housewife, it may not be appropriate to award further benefit of notional future prospects, particularly when in the cases of notional income, the Courts are not making any deduction for personal expenses. Besides, in **Royal Sundaram Alliance Insurance Co. Ltd. vs. Manmeet Singh and others, 2012 ACJ Delhi 721**, similar view was expressed that no deduction would be made while assessing the loss of income of a home-maker. Further, in **Paramjit Singh and another v. Dilbagh Singh @ Bagga and others, 2013 (4) PLR 328 (P&H)** it was held that income of a housewife was assessed as monthly value of her services and not her monthly income therefore, the concept of deduction would not be applicable.

Accordingly, the plea for deduction from the notional monthly contribution of the housewife towards her family is rejected.

[9] However, as per paragraph No.61 (viii) of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009** only a sum of ₹ 15,000/- is payable on account of loss of estate and like amount on account of funeral expenses, besides, ₹ 40,000/- on account of loss of consortium.

[10] Learned counsel for the parties are in agreement that multiplier of 13 was correctly applied, therefore the same does not warrant interference.

[11] Accordingly, the compensation awarded on account of conventional heads is modified and the respondents/claimants are held entitled to ₹ 40,000/- on account of loss of spousal consortium and ₹ 15,000/- on account of funeral expenses besides like amount on account of loss of estate. Hence, in all, the respondents/claimants are held entitled to ₹ 70,000/- on account of conventional heads.

[12] In the light of the position as noted above, as against compensation of ₹ 15,29,000/- awarded by the learned Tribunal, the respondents/claimants are held entitled to compensation of **₹ 14,74,000/- (i.e. ₹ 9,000/- x 12 x 13 + ₹ 70,000/-)** along with interest @ 9 % per annum with effect from the date of claim petition till date of payment, less payment, if any, already made. Apportionment of the compensation shall be made in accordance with the ratio stipulated in the award passed by the learned Tribunal.

[13] Accordingly, appeal (i.e. FAO No.5414 of 2015) filed by the Insurance Company is partly allowed while appeal (i.e. FAO No.5470 of 2015) is dismissed as not pressed. Award dated 20.05.2015 passed by the learned Tribunal, Kurukshetra is modified to the extent as noted above.

(B.S. Walia)
Judge

18.03.2019
amit

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