IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 03.07.2019

FAO 5347 of 2016 (O&M)

SBI General Insurance Company Limited ....Appellant

Versus

Shanti Bai and others ....Respondents

FAO 5351 of 2016 (O&M)

SBI General Insurance Company Limited ....Appellant

Versus

Kamla Khangar and others ....Respondents

FAO 6227 of 2016 (O&M)

Shanti Bai and others ....Appellants

Versus

Naresh Kumar and others ....Respondents

FAO 8045 of 2016 (O&M)

Kamla Khangar and others ....Appellants

Versus

Naresh Kumar and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Ms Vandana Malhotra, Advocate
for the insurance company

Mr. S S Momi, Advocate
for the claimants

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 22.03.2016 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been assessed on account of death of Hariya and Ganesh in a motor vehicular accident that took place on 21.12.2014.

FAO Nos. 5347 and 5351 of 2016 have been preferred by SBI General Insurance Company Limited (hereinafter referred to as 'the insurance company') whereas FAO Nos. 6227 and 8045 of 2016 have been filed by the claimants seeking enhancement of compensation on account of death of Hariya and Ganesh, respectively.

Counsel for the insurance company would inform that the appeals have been preferred to assail only quantum of compensation.

CM 18342 CII of 2016 in FAO 5347 of 2016

Prayer in this application is for condoning delay of 18 days in refiling the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 18 days in refiling the appeal stands condoned.

FAO No. 5347 and 6227 of 2016

The Tribunal awarded Rs.5,09,000/-, detailed hereunder:-

-Monthly income of deceased	Rs.8,100/-
-Deduction for personal expenses	1/3rd
-Multiplier	5
-Loss of dependency	Rs.3,24,000/-
-Loss of love and affection to widow	Rs.1,00,000/-
-Loss of love and affection to children	Rs.50,000.00

	(25,000x2)
-Funeral expenses	Rs.25,000/-
-Transportation charges	Rs.10,000/-

Counsel for the insurance company would argue that income of the deceased has been assessed on the basis of Deputy Commissioner's (in short 'DC) rates, meant for payment of wages out of contingency fund but the minimum wage of an unskilled labour at the relevant time was Rs.5,341/- per month. Compensation under conventional heads may be restricted to Rs.70,000/-.

Counsel representing the claimants, on the contrary, has supported assessment of compensation.

The Tribunal has assessed income of deceased on the basis of DC rates. As has been rightly argued by counsel for the insurance company, DC rates are fixed for payment to employees out of contingency fund created for the purpose. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.5,639.00 per month. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency is calculated at Rs.2,25,560/- (Rs.3,38,340/- *i.e.* 5,639 x 12 x 5 – Rs.1,12,780/- (1/3rd (deduction) .

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that the claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National***

Insurance Company Limited and another, 2018 AIR (SC) 5034.

In view of the above, total compensation comes to Rs.2,95,560/-and compensation awarded by the Tribunal is reduced to the extent of Rs.2,13,440/-. The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the going reasons, the appeals are disposed of in the aforesaid terms.

FAO 5351 and 8045 of 2016

The Tribunal awarded Rs.14,47,200/-, detailed hereunder:-

-Monthly income of deceased	Rs.8,100/-
-Addition in income	50%
-Deduction for personal expenses	50%
-Multiplier	18
-Loss of dependency	Rs.13,12,200/-
-Loss of love and affection	Rs.1,00,000/-
-Funeral expenses	Rs.25,000/-
-Transportation charges	Rs.10,000/-

In view of observations made in FAO No. 5347 of 2016, income of the deceased is assessed at Rs.5,639/- per month. Addition in income for future prospects would be 40% in the light of judgment in ***Pranay Sethi's*** case (supra). Deduction for personal expenses and multiplier allowed by the Tribunal are correct and affirmed. As such, loss of dependency comes to Rs.8,52,617/- (Rs.12,18,024/- i.e. 5,639 x 12 x 18 + Rs.4,87,210/- (40% addition) – Rs.8,52,617/- (50% deduction)

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that the claimants shall be entitle to

Rs.30,000.00 (Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court in ***Pranay Sethi's*** and ***Sebastiani Lakra's*** case (supra)**.**

In view of the above, total compensation comes to Rs.8,82,617/- and compensation awarded by the Tribunal is reduced to the extent of Rs.5,64,583/- (14,47,200-8,82,617). The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the going reasons, the appeals are disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

03.07.2019
Mohan Bimbra

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