IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 5415 of 2016 (O&M)
Date of decision: 12.07.2019

Neelam Devi and others ....*Appellants*

Versus

M/s North Eastern Carrying Corp Limited and another . ...*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Rajkapoor Malik, Advocate
for the appellants

Mr. Varun Sharma, Advocate
for respondent No. 2

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Rekha Mittal, J. (Oral)

The claimants are in appeal seeking enhancement of compensation on account of death of Krishan Chand *alias* Kishan in a motor vehicular accident that took place on 26.12.2014.

The claim was preferred under Section 163-A of the Motor Vehicles Act, 1988 (in short, 'the Act'). The Tribunal awarded Rs.4,05,500/-, detailed hereunder:-

-Monthly income of the deceased	Rs.3,300/-
-Deduction for personal expenses	$1/3^{rd}$
-Multiplier	15
-Loss of dependency	Rs.3,96,000/-
-Funeral expenses	Rs.2,000/-
-Loss to estate	Rs.2,500/-
-Loss of consortium	Rs.5,000/-

The Tribunal, in para 31 of the award, has noticed that in driving licence Ex.PE, date of birth of deceased is recorded as 06.08.1985 but there is no documentary proof to support the said date of birth. The Tribunal considered age of the deceased to be 40 years on the basis of post mortem report.

The claim has been preferred by widow aged 25 years, two minor children aged four and three years and widowed mother of the deceased. The Insurance company has not adduced any evidence to counter date of birth of the deceased recorded in driving licence. In the given circumstances, the Tribunal should have given primacy to date of birth recorded in driving licence viz-a-viz one in the post mortem report.

Taking into consideration date of birth of the deceased to be 06.08.1985, the deceased was less than 30 years at the time of accident and accordingly, admissible multiplier is 18 as provided in the Second Schedule appended to Section 163-A of the Act. Income of the deceased and deduction for personal expenses applied are correct and affirmed. As such, loss of dependency comes to Rs.4,75,200/- (Rs.7,12,800/- *i.e.* 3,300 x 12 x 18 – Rs.2,37,600 (1/3rd deduction).

Counsel for the appellants would argue that compensation under conventional heads may be allowed to the tune of Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***. I do not find any merit in this contention as in a case under Section 163-A of the Act, compensation is to be assessed in view of the structured formula provided in Second Schedule appended thereto.

Total compensation is Rs.4,84,700/- (4,75,000 + 2,000 + 2,500 + 5,000) and additional amount is Rs.79,200.00 (Rs.4,84,700.00 – Rs.4,05,500.00), payable with interest @ 7.5% per annum from the date of petition till realization to minor *Rohan* and *Sumit* in equal share, to be invested in fixed deposit till they attain majority or for a period of three years whichever is later.

In view of what has been discussed herein-above, the appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

12.07.2019
Mohan Bimbra

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