**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Date of decision: 11.01.2019**

**FAO No.5669 of 2016 (O&M)**

SBI General Insurance Co. Ltd. ... Appellant

Versus

Savita Devi and others ... Respondents

**FAO No.7738 of 2016 (O&M)**

Savita Devi and others ... Appellants

Versus

Subhash and others ... Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. Satpal Dhamija, Advocate
for the insurance company.

Mr. Rakesh Sobti, Advocate
for the claimants.

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**REKHA MITTAL, J. (Oral)**

This order will dispose of FAO Nos.5669 and 7738 of 2016 as these have emerged out of the award dated 22.04.2016 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been awarded on account of deaths of Manoj Kumar and Satish Kumar in a motor vehicular accident that took place on 25.04.2015.

FAO No.5669 of 2016 has been filed by the SBI General Insurance Co. Ltd. whereas the other appeal has been filed by the claimants in respect of death of Satish Kumar.

Counsel for the the insurance company would fairly inform that the appeal has been filed to assail quantum of compensation assessed by the Tribunal.

The insurance company shall be referred to as 'the appellant' whereas claimants shall be referred to as 'claimants' for sake of convenience.

With regard to death of Satish Kumar, the Tribunal has awarded compensation of Rs.20,25,800/-, detailed hereunder:-

| | |
|---|---|
| 1. Monthly income of the deceased | Rs.9000/- |
| 2. Multiplier | 17 |
| 3. Deduction for personal expenses | 1/4th |
| 4. Loss of dependency | Rs.13,77,000/- |
| 5. Expenses on last rites | Rs.20,000/- |
| 6. Loss of consortium | Rs.50,000/- |
| 7. Future prospects | Rs.5,78,800/- |

Counsel for the claimants would argue that the claimants produced on record certificate issued by the Manager, BRS Automobiles Singhana Road, Narnaul recording that Satish was working as Parts Manager at salary of Rs.13,500/- per month, therefore, income of the deceased assessed by the Tribunal is liable to be enhanced. It is further argued that adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, has assailed assessment of income at Rs.9000/- per month on the premise that neither the claimants have been able to prove employment of Satish Kumar with BRS Automobiles Singhana Road, Narnaul nor they have produced any document with regard to his educational qualification, therefore, he is to be treated as unskilled worker and accordingly his income may be assessed. It is further submitted that in view of age of the deceased, admissible increase for future prospects would be 40%.

The Tribunal, in para 18 of the award, has noticed that claimants produced on record certificate issued by BRS Automobiles Singhana Road, Narnaul but they have failed to prove that deceased was permanent employee of any firm as they have not placed any other document on record. However, the Tribunal has assessed his income by treating him as a skilled labourer in absence of proof of income.

The claimants examined Neeraj Swami, Sales Manger to prove salary certificate of deceased Satish Kumar Ex.PW5/A but the said witness did not produce any other documentary evidence in order to prove employment and payment of salary to Satish Kumar. In the given circumstances, the Tribunal has rightly ignored the salary certificate Ex.PW5/A while assessing income of the deceased. The claimants have not produced any documents with regard to educational qualification of Satish Kumar. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.12,85,200/- [(6000 x 12 x 17) + (40% future prospects) – (1/4$^{th}$ deduction for personal expenses)].

Under conventional heads, claimants have been allowed a sum of Rs.70,000/- and the same is affirmed in the light of latest judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034.**

Total compensation is Rs.13,55,200/- and compensation allowed by the Tribunal is reduced to the extent of Rs.6,70,600/- (20,25,800 - 13,55,200). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants is dismissed, leaving the parties to bear their own costs.

11.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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