IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 6908 of 2015 and
Xobjc 81 CII of 2016
Date of decision: 23.10.2019

Magma HDI General Insurance Company Limited ....Appellant

Versus

Smt. Kamla Devi and others ....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Vishal Aggarwal, Advocate
for the appellant

Mr. Dharam Pal, Advocate
for respondents No. 1 to 3/cross objectors

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeal as well as cross objections as these have emerged out of the same award dated 23.07.2015 passed by the Motor Accidents Claims Tribunal, Jhajjar whereby compensation has been assessed on account of death of Sandeep in a motor vehicular accident that took place on 20.08.2013.

The appeal has been filed by Magma HDI General Insurance Company Limited (hereinafter referred to as 'the insurance company') whereas cross objections have been filed by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.22,90,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.10,000/-
-Addition in income for future prospects	50%
-Deduction for personal expenses	1/3rd
-Multiplier	18
-Loss of dependency	Rs.21,60,000/-
-Loss of consortium	Rs.1,00,000/-
-Funeral expenses	Rs.25,000/-
-Loss of estate	Rs.5,000/-

Counsel for the insurance company would argue that income of the deceased assessed by the Tribunal is not based upon materials on record as the claimants failed to adduce sufficient evidence to establish their plea that deceased was either an agriculturist or running a milk dairy thereby earning Rs.25,000/- per month. Addition in income for future prospects and compensation allowed under conventional heads may be modified in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270*** .

Counsel for the claimants/cross objectors, on the other hand, would argue that it has been established on record that the deceased had taken loan of Rs.14,00,000/- from Co-operative Bank, Jhajjar and statement of loan account is marked as Ex.P5. It is further argued that the minor daughter of the deceased has not been allowed any compensation for loss of love and affection.

Be that as it may, it is undisputed position of the case that the deceased had taken loan of Rs.14,00,000/- from Co-operative Bank, Jhajjar and had been paying loan by way of installments. However, claimants failed to adduce any evidence that deceased was owner of land or indulged in cultivation of land of others or running a milk dairy. Keeping in view the materials on record, I do not find any reason to interfere in assessment of income by the Tribunal. However, addition in income for future prospects would be 40%. Deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. As such, loss of dependency comes to Rs.20,16,000/- (Rs.21,60,000/- i.e. 10,000 x 12 x 18 + Rs.8,64,000 (40% addition) – Rs.10,08,000/- (1/3rd deduction).

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that 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 in ***Pranay Sethi's*** case (supra) and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.20,86,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.2,04,000/- (22,90,000 - 20,86,000). The insurance company shall be entitle to recover excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. As a natural corollary, cross objections are dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

23.10.2019
Mohan Bimbra

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