IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

235 FAO-6464-2016 (O&M)

Date of decision: 29.08.2019

ORIENTAL INSURANCE COMPANY LTD ... Appellant

Versus

BIMLA MEHTA & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate for the appellant.
Mr. JS Cooner, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 04.07.2016 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of death of Dinesh Mehta in a motor vehicular accident that took place on 05.07.2015.

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

The Tribunal awarded Rs.9,60,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.15,000/-
Multiplier	5
Deduction for personal expenses	$1/3^{rd}$
Loss of dependency	Rs.6,00,000/-
Expenses on last rites and transportation	Rs.25,000/-
Loss of estate	Rs.25,000/-
Loss of love and affection	Rs.2,10,000/-
Loss of consortium	Rs.1,00,000/-

Counsel for the appellant would argue that even though it has been established that Dinesh Mehta was doing business of sale of electrical goods under the name and style of M/s Mehta Enterprises but there is no clear evidence on record with regard to income from the said business. It is further argued that both sons of the deceased arrayed as claimants No.2 and 3 appeared in the witness box and deposed that they are also doing business of electrical work. It is argued that after demise of Dinesh Mehta, business carried by him would be taken over by his sons who are already doing similar business. It is further argued that the deceased was 70 years of age and he was not an income tax assessee.

Another submission made by counsel is that as both sons of the deceased were not dependent upon the deceased having their independent avocation and income, deduction for personal expenses needs modification. Compensation allowed under conventional heads may be restricted to Rs.70,000/-.

Counsel representing the claimants, on the contrary, has supported assessment of loss of dependency with the submission that the Tribunal has rightly computed monthly income at Rs.15,000/- per month.

Be that as it may, it has been established on record that deceased was doing business of electrical works under the name and style of M/s Mehta Enterprises. It is not plea of the claimants that after demise of Dinesh Mehta, business has been closed down. On the contrary, both adult sons of the deceased are also involved in the business of electrical goods. The deceased was 70 years of age. Taking a cumulative view from the above, interest of justice would be served, if income of the deceased is assessed at Rs.10,000/- per month. Deduction for personal expenses allowed by the Tribunal is correct and affirmed. In this context, reference can be made to judgment of this Court **Pawan Kumar and others Vs. Ramesh Kumar and others, 2016(1) Law Herald 758**. Multiplier applied by the Tribunal is affirmed. In this manner, loss of dependency is calculated at Rs.4,00,000/- [(10,000 x 12 x 5) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.4,70,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.4,90,000/- (9,60,000 - 4,70,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

29.08.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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