IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

231 XOBJC-27-CII of 2017 (O&M) in/and

FAO-6617-2016 (O&M)

Date of decision: 18.12.2019

NEW INDIA ASSURANCE COMPANY LIMITED ... Appellant

Versus

NEELAM DEVI AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate
for the insurance company.
Mr. Bhupinder S. Bairagi, Advocate
for the claimants/cross objectors.
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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 11.07.2016 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of death of Virender Singh in a motor vehicular accident that took place on 29.08.2014.

Counsel for the insurance company would inform that appeal has been filed to assail findings of the Tribunal on issue No.1 and quantum of compensation.

The Tribunal awarded Rs.50,97,000/- (rounded off to Rs.51,00,000/-), detailed hereunder:-

Monthly income of the deceased	Rs.22,000/-
Addition in income for future prospects	50%
Multiplier	16
Deduction for personal expenses	1/4th
Loss of dependency	Rs.47,52,000/-
Expenses on funeral	Rs.25,000/-
Loss of estate	Rs.1,00,000/-
Loss of consortium	Rs.1,00,000/-
Reimbursement of medical expenses	Rs.1,20,000/-

Counsel for the appellant would argue that deceased was travelling in car bearing No.HR-80-9174 driven by Vikas (respondent No.1 herein). It is further argued that after crossing the divider, the said car hit another vehicle and as such, the insurance company has wrongly been fastened with liability to pay compensation while determining issue No.1 in favour of the claimants.

With regard to quantum of compensation, it is argued that income tax returns Exs.P1 to P4 were produced on record. He would state that the last return for the assessment year 2014-15 Ex.P4 was filed on 14.11.2014 after death of deceased in August, 2014, therefore, the Tribunal has seriously faulted by relying upon the latest income tax return wherein annual income has been shown to the tune of Rs.2,95,000/-. Addition in income for future prospects and compensation allowed under conventional heads may be modified 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**.

The claimants placed on record the income tax returns starting from assessment year 2010-11 to 2014-15. The return for assessment year 2014-15 Ex.P4 showing income to the tune of Rs.2,95,000/- was filed subsequent to death of the deceased. There is no computation with regard to income of the deceased, appended with the return Ex.P4 nor the claimants produced any supporting documents with regard to income of the deceased for financial year 2013-14. In the given circumstances, I find merit in contention of the insurance company that income tax return Ex.P4 cannot form the basis for assessing income of the deceased. Taking into consideration the latest return filed by the deceased himself, annual income of the deceased is assessed at Rs.1,96,000/-. The deceased was born on 22.08.1983 recorded in the income tax returns and he was slightly more than 31 years on the date of unfortunate accident. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed and so also the multiplier applied. In this manner, loss of dependency is calculated at Rs.32,92,800/- [(1,96,000 x 16) + (40% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium Rs.40,000/-

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

Reimbursement of medical expenses to the tune of Rs.1,20,000/- allowed by the Tribunal is affirmed.

The contention raised by the insurance company with regard to findings of the Tribunal on issue No.1 is not meritorious and liable to be rejected. The deceased was an occupant of the aforesaid ill-fated car driven by Vikas. The insured had obtained comprehensive policy that would cover risk of passengers travelling in the car. In this view of the matter, the insurance company cannot escape liability to pay compensation to the claimants.

Total compensation is Rs.34,82,800/- and compensation assessed by the Tribunal is reduced to the extent of Rs.16,17,200/- (51,00,000 - 34,82,800). 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. As a natural corollary, cross objections filed by the claimants are dismissed.

(REKHA MITTAL)
JUDGE

18.12.2019
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Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No