IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.02.2019
FAO No.7863 of 2015 (O&M)

New India Assurance Company Ltd. ... Appellant

Versus

Santosh and others ... Respondents

FAO No.2536 of 2016 (O&M)

Santosh and others ... Appellants

Versus

Balvinder Singh and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikram Bali, Advocate
for the claimants.

Mr. Ashwani Talwar, Advocate
for the insurance company.

Mr. Mandeep S. Dhaliwal, Advocate
for the owner and driver.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.7863 of 2015 and 2536 of 2016 as these have emerged out of the same award dated 11.09.2015 passed by the Motor Accidents Claims Tribunal, Panchkula whereby compensation has been assessed on account of death of Sultan Singh in a motor vehicular accident that took place on 28.05.2013.

FAO No.7863 of 2015 has been filed by the New India Assurance Co. Ltd. whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would argue that the appeal has been filed in regard to quantum of compensation and driving licence Ex.R6 possessed by Balvinder Singh, driver of trolla bearing No.PB-03-U-5719 (offending vehicle).

The Tribunal has awarded compensation of Rs.13,85,400/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.7000/-
2. Addition in income for future prospects	30%
3. Multiplier	15
4. Deduction for personal expenses	$1/5^{th}$
5. Loss of dependency	Rs.13,10,400/-
6. Loss of love and affection, expenses on funeral and last rites etc.	Rs.75,000/-

Counsel representing the claimants in the appeal preferred by the insurance company would argue that compensation assessed by the Tribunal is on lower side and needs enhancement.

The plea of claimants is that the deceased was owner of Balero jeep bearing No.HR-68-A-5864 and apart from driving his own vehicle, he was working as Sweeper in Grow More Group Housing Society No. 83, Sector 20, Panchkula. Smt. Santosh widow of the deceased appeared in the witness box and deposed that her husband was working as Sweeper in the aforesaid society and after his death, she is working as Sweeper and earning Rs.8000/- per month. The Tribunal has noticed that Santosh in her cross examination admitted that she had no proof to establish that her husband was working in the society. But claimants examined Sandeep Lamba, Secretary of the Society to prove document Ex.PW3/A with regard to payment of salary to the tune of Rs.5500/- on 06.05.2012 whereas the accident had taken place on 28.05.2013. The name of the deceased was mentioned in the register maintained by the society on 09.07.2011 and at that time, he was getting salary of Rs.5000/- per month. Taking a view from the evidence on record and considering the minimum wage available at the relevant time, the Tribunal assessed income of the deceased at Rs.7000/- per month. I have perused the notification issued by the State of Haryana fixing minimum wage. Taking a clue from the notification coupled with materials on record, monthly income is assessed at Rs.6000/-.

The Tribunal, in para 14 has held that as per plea of the claimants, the deceased was 39 years old. In the postmortem report Ex.P2, he is recorded to be 35 years old. However, the Tribunal has held that as claimant No.1 pleaded her age to be 37 years and age of her eldest daughter as 18 years, obviously, the deceased was about 40 years old. Counsel for the claimants has failed to assail findings of the Tribunal successfully. As the deceased was not less than 40 years of age, admissible addition in income for future prospects would be 25%.

The application for compensation has been filed by the widow and four children of the deceased, therefore, admissible deduction for personal expenses would be $1/4^{th}$. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.10,12,500/- [(6000 x 12 x 15) + (25% future prospects) – (1/4th 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.10,82,500/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,02,900/- (13,85,400 - 10,82,500).

The Tribunal has allowed interest @ 6% per annum but in case the compensation is not deposited within two months, interest would be chargeable @ 8% per annum. The penal interest allowed by the Tribunal is not sustainable in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur and ors., 2004(2) RCR (Civil) 99.** However, claimants shall be entitle to interest @ 7.5% per annum on compensation allowed in appeal from the date of petition till realization.

This brings the Court to the issue of driving licence possessed by the deceased. The Tribunal, in para 15 of the award, has rejected contention of the insurance company on the premise that if the insurance company was of the view that driving licence Ex.R6 is fake, it was required to summon the record from concerned licensing authority or the same should have been verified by getting the Court Commissioner appointed. I do not find any reason to interfere in findings of the Tribunal on this aspect. The mere fact that State of Nagaland has issued some communication for issuance of licence in smart card form *ipso facto* does not lead to conclusion that licence Ex.R6 possessed by the driver was not valid or the same is fake. The insurance company has failed to discharge its obligation to prove that licence Ex.R6 was not issued by the concerned licensing authority. In this view of the matter, findings of the Tribunal on issue No.3 cannot be faulted with and the same are affirmed.

In view of what has been discussed hereinbefore, the appeal preferred by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal preferred by the claimants is dismissed. As the appeal (FAO No.2536 of 2016) has been decided on merits, application for condonation of delay is of academic relevance only.

08.02.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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