IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

240 **Date of decision: 24.01.2019**

FAO No.7415 of 2016 (O&M)

New India Assurance Co. Ltd. ... Appellant

Versus

Kamlesh and others ... Respondents

FAO No.1583 of 2017 (O&M)

Kamlesh and others ... Appellants

Versus

Satbir and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the insurance company.
Mr. Rishabh Lohan, Advocate for
Mr. R.N. Lohan, Advocate for the claimants.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.7415 of 2016 and 1583 of 2017 as these have emerged out of the same award dated 15.07.2016 passed by the Motor Accidents Claims Tribunal, Jind whereby compensation has been assessed on account of death of Shish Pal in a motor vehicular accident that took place on 31.01.2014.

FAO No.7415 of 2016 has been filed by the insurance company whereas the other appeal has been preferred by the claimants seeking enhancement of compensation.

Counsel for the insurance company would inform that the appeal has been preferred to assail only quantum of compensation allowed by the Tribunal.

CM No.25361-CII of 2016 in FAO No.7415 of 2016

Heard.

Allowed as prayed for. Delay of 25 days in filing the appeal stands condoned.

Main Cases

The Tribunal has awarded compensation of Rs.37,85,800/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.28,300/-
2. Multiplier	14
3. Deduction for personal expenses	1/4th
4. Loss of dependency	Rs.35,65,800/-
5. Expenses on last rites	Rs.20,000/-
6. Loss of consortium to the widow	Rs.1,00,000/-
7. Loss of love and affection	Rs.1,00,000/-

Counsel for the insurance company would argue that as the deceased was working as Clerk in the office of District Employment Exchange, Fatehabad, widow of the deceased shall be entitle to financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 and the same is liable to be deducted out of compensation assessed by the Tribunal.

Counsel for the claimants, on the contrary, would argue that only 50% of the financial assistance is amenable to deduction, in the light of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017**. It has further been argued that claimants are entitle to benefit of future prospects @ 30% as the deceased was a government employee. He would further argue that compensation under conventional heads may be allowed in the light of judgment of Hon'ble the Supreme Court **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333**.

Counsel representing the insurance company, in reply, would argue that in the light of decision by a Constitution Bench of Hon'ble the Apex Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and latest judgment of Three Judge Bench **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**, compensation allowed under conventional heads is liable to be restricted to Rs.70,000/-.

The Tribunal has assessed income of the deceased at Rs.28,300/- per month and the same is affirmed. The annual income is Rs.3,39,600/-. After deducting income tax (Rs.13,960), net annual income is Rs.3,25,640/-. Claimants shall be entitle to addition in income for future prospects @ 30%. Deduction for personal expenses allowed by the Tribunal is correct and affirmed and so also the multiplier applied for computing loss of dependency. In this manner, compensation qua loss of dependency is calculated at Rs.44,44,986/- [(3,25,640 x 14) + (30% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, the Tribunal has allowed compensation to the tune of Rs.2,20,000/-. Hon'ble the Supreme Court in **Pranay Sethi and others's case (supra)** decided by a Constitution Bench has laid down as a principle in law that compensation under conventional heads would be Rs.70,000/- namely Rs.40,000/- for loss of consortium to the widow, Rs.15,000/- for expenses on last rites and Rs.15,000/- for loss to estate. No doubt, Two Judges Bench in **Magma General Insurance Co. Ltd.'s case (supra)** has allowed loss of consortium to the parents or children of a deceased but in the latest judgment by Three Judge Bench **Sebastiani Lakra and others's case (supra),** compensation available under conventional heads allowed in **Pranay Sethi and others's case (supra)** has been affirmed. In the given circumstances, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of judgments in **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others's case (supra).**

Total compensation is Rs.45,14,986/-.

The deceased was an employee of Haryana Government and he was 43 years old at the time of occurrence. The family of the deceased shall be entitle to benefit of compassionate assistance for a period of 12 years. Jai Parkash, Assistant, District Employment Office, Fatehabad PW4 was examined by the claimants. In his cross examination, he has deposed that Smt. Kamlesh Devi will take all the benefits since 01.02.2014 and got salary of Rs.30,107/- for the month of August, 2015 and this amount would be available till 31.01.2026. The total amount of financial assistance is computed at Rs.43,35,408/- and 50% thereof i.e.Rs.21,67,704/- shall be deducted in the light of judgment of this Court **Ajmero and others's case (supra)**. After deducting Rs.21,67,704/-, net compensation payable to the claimants is Rs.23,47,282-/-. In view of the above, compensation allowed by the Tribunal is reduced to the extent of Rs.14,38,518/- (37,85,800 – 23,47,282). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

The appeals are disposed of in the aforesaid terms.

24.01.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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