IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244 Date of decision: 18.10.2019

FAO No.1944 of 2017 (O&M)

Universal Sompo General Insurance Co. Ltd. ... Appellant

Versus

Neetu and others ... Respondents

FAO No.1952 of 2017 (O&M)

Universal Sompo General Insurance Co. Ltd. ... Appellant

Versus

Pushpa and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Pradeep Kumar, Advocate for the insurance company.
None for the claimants.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1944 and 1952 of 2017 as these have emerged out of the same award dated 21.10.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar whereby compensation has been assessed on account of death of Rakesh and Vipin in a motor vehicular accident that took place on 08.12.2013.

Counsel for the insurance company would inform that appeals have been filed to assail quantum of compensation assessed by the Tribunal.

FAO No.1944 of 2017

The Tribunal awarded Rs.12,10,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.15,000/-
Multiplier	16
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.9,60,000/-
Expenses on funeral and transportation	Rs.50,000/-
Loss of love and affection	Rs.2,00,000/-

Counsel for the appellant would argue that income of the deceased assessed by the Tribunal is on higher side and merits reduction. To bring home his contention, it is argued that Tribunal, in para 20 of the award, has noticed that deceased was employed as driver on the offending vehicle of respondent No.2 but as a matter of fact, plea of the claimants is that deceased was a plumber but they failed to adduce satisfactory evidence to prove that deceased was a plumber much less had income to a particular extent.

In para 4 of the award wherein the Tribunal has noticed the facts from Petition No.10 of 2013 filed by Neetu and others with regard to death of Rakesh, it has been noticed that Rakesh was working as plumber thereby earning Rs.15,000/- per month. In respect of the offending vehicle of M/s Jagdamba Granite and Marble respondent No.2 therein, Manoj son of Balwan respondent No.1 therein is stated to be the driver of said vehicle. This fact shows that findings of the Tribunal in the opening lines of para 20 are the result of misreading of materials on record.

Claimants failed to adduce sufficient much less cogent evidence to prove that Rakesh was working as plumber and had income from the said avocation. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%.

The claim has been filed by the widow, four minor children and parents of the deceased. There is no evidence on record that father of the deceased had any disability rendering him unable to work and earn his livelihood. In the given scenario, Jagdish Chander claimant is not entitle to loss of dependency. The claimants who are entitle to loss of dependency are six and accordingly, admissible deduction for personal expenses would be $1/4^{th}$. The multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.12,09,600/- [(6000 x 12 x 16) + (40% future prospects) – ($1/4^{th}$ 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/-

Total compensation is Rs.12,79,600/- and additional amount is Rs.69,600/- (12,79,600 - 12,10,000) payable with interest @ 7.5% per annum from the date of petition till realization, to Ansh minor son of the deceased to be invested in fixed deposit till he attains majority or for a period of three years, whichever is later.

The appeal stands disposed of in the aforesaid terms and copy of the judgment be sent to the claimants in order to enable them to realise the additional amount.

FAO No.1952 of 2017

The Tribunal awarded Rs.11,14,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.12,000/-
Multiplier	18
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.8,64,000/-
Expenses on funeral and transportation	Rs.50,000/-
Loss of love and affection	Rs.2,00,000/-

Counsel for the appellant would argue that observations of the Tribunal that deceased was employed as driver at monthly income of Rs.12,000/- are contrary to records as deceased was stated to be employed in a company and PW4 was examined to prove his employment and income. He would further argue that as the deceased was unmarried son of claimants Pushpa and Amar Singh, siblings of the deceased cannot claim loss of dependency during lifetime of their father, therefore, the Tribunal has seriously faulted by failing to consider judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** in right perspective and allowing deduction for personal expenses to the tune of 1/3rd. 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**.

It is surprising rather mystifying that the Tribunal without examining the averments made in the claim preferred with regard to death of Rakesh and Vipin and so also the testimonies of Neetu, wife of Rakesh and Pushpa, mother of Vipin has held both the deceased to be drivers and assessed their monthly income at Rs.15,000/- and Rs.12,000/- respectively.

In the case of Vipin, Pushpa filed her affidavit Ex.PW4/A by way of examination in chief. In para 7 of the affidavit, she had deposed that deceased was getting salary of Rs.5800/- per month, earned Rs.2000/- from over time and Rs.4000/- by selling fruit and vegetables as part time. In cross examination, she has denied that her son was not doing private job with Relaxo Par Excellence, Bahadurgarh or not selling fruits and vegetables thereby earning Rs.12,000/- per month.

The claimants examined Raj Kumar Gill, Personal and Administrator, Relaxo Footwears Ltd., Bahadurgarh PW1. He has deposed that the aforesaid concern had appointed M/s Dangi Enterprises, who in turn had appointed Vipin Kumar as helper at Rs.5343/- per month as wages and Rs.500/- per month as ex gratia. However, he did not produce any salary and service record with regard to employment of Vipin Kumar under M/s Dangi Enterprises. Pushpa, PW4 produced documents Exs.PW4/B to PW4/F, copies of salary slips of Vipin, with an objection by contesting party. However, there is no evidence on record with regard to the deceased being paid any over time or his doing part time job as a fruits and vegetables seller. Taking a clue from notification issued by the State of Haryana fixing minimum wage coupled with materials on record and in view of discussion made while deciding FAO No.1944 of 2017, income of the deceased is assessed at Rs.6000/- per month.

The claim has been filed by unfortunate parents and siblings of the deceased. The Tribunal allowed deduction of 1/3rd for personal expenses without assigning any reason to deviate from the criteria laid down in **Sarla Verma & others's case (supra)**, reference whereof has been made in the award. There is nothing on record suggestive of the fact that father of the deceased had any disability to render siblings of the deceased dependent on his income. In the given circumstances, admissible deduction for personal expenses would be 50%. Smt. Pushpa, mother of the deceased had stated that Vipin Kumar was 25 years old at the time of death. Pushpa has denied suggestion that Vipin was more than 35 years of age. The insurance company has not adduced any evidence to rebut testimony of Pushpa with regard to age of the deceased. As such, admissible multiplier is 18. Claimants shall be entitle to addition in income for future prospects @ 40%. In view of the above, loss of dependency is calculated at Rs.9,07,200/- [(6000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded is modified to the effect that claimants shall be entitle to Rs.30,000/-, in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others's case (supra)** and **Sebastiani Lakra and others's case (supra)**, detailed hereunder:-

1. Expenses on last rites Rs.15,000/-
2. Loss of estate Rs.15,000/-

Total compensation is Rs.9,37,200/- and compensation assessed by the Tribunal is reduced to the extent of Rs.1,76,800/- (11,14,000 - 9,37,200). 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 disposed of in the aforesaid terms. A copy of this judgment be sent to the then presiding officer (Ms. Rachna Gupta).

18.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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