IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

253+255 **Date of decision: 20.08.2019**

FAO No.2087 of 2017 (O&M)

L&T General Insurance Co. Ltd. ... Appellant

Versus

Smt. Maksudan and others ... Respondents

FAO No.6659 of 2017 (O&M)

Smt. Maksudan and others ... Appellants

Versus

M/s Mewat Grit Udyog and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Vandana Malhotra, Advocate for the insurance company.
Mr. Barjinder Singh, Advocate for the claimants.
Mr. Arjun Atri, Advocate for driver and owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2087 and 6659 of 2017 as these have emerged out of the same award dated 30.08.2016 passed by the Motor Accidents Claims Tribunal, Mewat whereby compensation has been assessed on account of death of Iliyas in a motor vehicular accident that took place on 26.11.2012.

FAO No.2087 of 2017 has been filed by L&T General Insurance Co. Ltd. (hereinafter referred to as '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 filed to assail only quantum of compensation assessed by the Tribunal.

CM No.6982-CII of 2017 in FAO No.2087 of 2017

Heard.

Allowed as prayed for. Delay of 110 days in filing the appeal stands condoned.

Main Cases

The Tribunal awarded Rs.11,35,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.5000/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	50%
Loss of dependency	Rs.8,10,000/-
Expenses on funeral	Rs.25,000/-
Loss of estate	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

Loss of expectation of life of deceased Rs.1,00,000/-

Counsel for the insurance company would argue that as the deceased was 16 years of age, the Tribunal has wrongly assessed income at Rs.5000/- per month and allowed addition in income for future prospects @ 50%. It is further argued that taking into consideration age of the deceased, only notional income of the deceased is liable to be assessed, at best, @ Rs.30,000/- per annum in the light of judgment of Hon'ble the Supreme Court **Kishan Gopal and another vs. Lala and others, 2013 (4) RCR (Civil) 276**. It is further argued that compensation allowed under conventional heads needs modification.

Counsel representing the claimants, on the contrary, would argue that deceased was 17 years of age and has been so rightly held by the Tribunal.

There is no clear evidence on record with regard to age of the deceased. As per version of the claimants, deceased was 17 years old at the time of occurrence. In the postmortem report, he is stated to be 16 years of age. There is nothing on record suggestive of the fact that deceased had any disability rendering him unable to earn livelihood. Taking a clue from notification issued by the State of Haryana fixing minimum wage of an unskilled labour, notional income of the deceased assessed by the Tribunal cannot be faulted with. Claimants shall be entitle to addition in income for future prospects @ 40% in place of 50% in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270** and judgment of this Court **National Insurance Co. Ltd. Vs. Pushpa Singh Chauhan and others, FAO No.1502 of 2015, decided on 20.03.2015** affirmed by Hon'ble the Supreme Court in SLP(C) S.No.19533 of 2015. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,56,000/- [(5000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

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

Total compensation is Rs.7,86,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.3,49,000/- (11,35,000 - 7,86,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal preferred by the claimants fails and is accordingly dismissed leaving the parties to bear their own costs. As the appeal (FAO No.6659 of 2017) has been decided on merits, application for condonation of delay is of academic relevance.

20.08.2019
ashok

(REKHA MITTAL)
JUDGE

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