[238] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2599 of 2017 (O&M)
Date of decision: 08.03.2019

The Oriental Insurance Company Ltd. ..... Appellant

Versus

Yash and others. ..... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Sanjiv Pabbi, Advocate for the appellant.
Mr. Ravinder Malik, Advocate for respondent Nos.2 & 3.
Mr. S.P. Chahar, Advocate for respondent No.4.
Mr. R.K. Singla, AAG, Haryana for respondent No.5.

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B.S. Walia, J. (Oral),

[1] Mr. Ravinder Malik, Advocate has put in appearance on behalf of respondent Nos.2 and 3 and filed power of attorney in Court today. The same is taken on record.

[2] Appeal has been filed by the Insurance Company seeking modification of award dated 29.11.2016 passed by the learned Motor Accidents Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') on the ground that in view of the deceased being a Guest Lecturer on temporary basis, award of future prospects @ 50% was legally impermissible and the claimants were entitled to computation of future prospects only @ 40% in view of the decision of Hon'ble the Supreme Court in **National Insurance Company Limited vs Pranay Sethi and others, 2017 (4) RCR (Civil) 1009**. Secondly, an amount of ₹ 25,000/- awarded by the learned Tribunal on account of funeral expenses and ₹ 30,000/- awarded on account of loss of love and affection to the parents-in- law of the

deceased as also ₹ 25,000/- on account of loss of love and affection to the minor children was unsustainable.

[3] Learned counsel appearing for the respondents/claimants does not dispute the plea of the learned counsel for the appellant for taking into account 40% of the established income of the deceased instead of 50% for the purpose of working out the future prospects as also to the non-entitlement to award of any amount on account of loss of love and affection. However, learned counsel for the respondents/claimants states that the respondents/claimants are entitled to ₹ 15,000/- on account of funeral expenses and ₹ 15,000/- on account of loss of estate.

[4] Learned counsel for the respondents/claimants further contends that the learned Tribunal wrongly deducted income tax @ 10% whereas no income tax was payable on annual income of ₹ 3,01,608/- assessed by the learned Tribunal. Learned counsel for the appellant frankly concedes that annual income of ₹ 3,01,608/- is non-taxable, therefore, no income-tax is payable.

[5] Having considered the submissions of learned counsel for the parties, I am of the view that the appeal is liable to be allowed and compensation payable modified.

[6] Admittedly, the deceased was not a permanent employee, therefore, although she was less than 40 years of age, claimants would not be entitled to take into account 50% of the established income of the deceased for the purpose of working out future prospects, but only 40% of the established income in terms of paragraph No. 61 (iii) of the decision in Pranay Sethis case (supra). Secondly, no amount is payable on account of loss of love and affection either to the parents in law and to the minor child of the deceased in terms of paragraph No.54 of the decision of Hon'ble the

Supreme Court in Pranay Sethi's case (Supra). However, the respondents/claimants would be entitled to ₹ 15,000/- on account of funeral expenses as against ₹ 25,000/- awarded by the learned Tribunal besides ₹ 15,000 on account of loss of estate as per paragraph No. 61 (viii) of the decision of Hon'ble the Supreme Court in Pranay Sethi's case (Supra).

[7] Accordingly, as against compensation of ₹ 40,97,708/- awarded by the Tribunal, the respondents/claimants are held entitled to the following compensation:-

Sr. No.	**Heads**	**Amount assessed by the Tribunal**	**Amount assessed by the Court**
1.	Income	₹ 25133/- (in actual i.e. as per last pay certificate (Ex.P3 of the deceased) but ₹ 25134/- (presumed at the time of giving compensation)	₹ 25133/-
2.	Future Prospects	50% of ₹ 25134/- = ₹ 12,567/-	40% of ₹ 25133/- ₹ 10,053/-
3.	Total Income Assessed	₹ 25134/- + ₹ 12,567/= ₹ 37,701/-	₹ 25133/- + ₹ 10,053/- = ₹ 35,186/-
4.	Multiplier applied	15	15
5.	Deduction (towards personal expenses of deceased)	$1/3^{rd}$ of ₹ 37,701/- = ₹ 12,567/-	$1/3^{rd}$ of ₹ 35,186/- = ₹ 11,728.6/- (rounded off ₹ 11,729/-)
6.	Dependency (Annual)	(₹ 37,701/- - ₹ 12,567/-) = ₹ 25,134/- (per month) and ₹ 25,134/- x 12 = ₹ 3,01,608/- (annually)	(₹ 35,186/- - ₹ 11,729/-) = ₹ 23,457/- (per month) and (₹ 23,457/- x 12) = ₹ 2,81,484/- (annually)

7.	Compensation awarded by applying multiplier	₹ 3,01,608/- x 15 = ₹ 45,24,120/-	₹ 2,81,484/- x 15 = ₹ 42,22,260/-
8.	Income tax deduction .	₹ 45,24,120/- - (@ 10% on the annual income) ₹ 4,52,412/- = ₹ 40,71,708/-	Income not taxable as per statement of counsel for appellant.
9.	Loss of Love and Affection	₹ 30,000/- (for parents in law of the deceased) And ₹ 25,000/- (for minor child of the deceased)	NIL
10.	Funeral Expenses	₹ 25,000/-	₹ 15,000/-
11.	Loss of Estate	NIL	₹ 15,000/-
12.	Rate of interest	7.5 % per annum	7.5% per annum
	Total	₹ 41,51,708/- (in actual) but wrongly calculated as ₹ 40,97,708/-.	₹ 42,52,260/-

[8] Accordingly, as against compensation of ₹ 40,97,708 (wrongly assessed as against actual amount which worked out to ₹ 41,51,708/-) awarded by the learned Tribunal, the respondents/claimants are held entitled to compensation of ₹ 42,52,260/- along with interest @ 7.5% per annum with effect from the date of claim petition till date of payment, less payment, if any, made earlier. Apportionment of the compensation shall be made in accordance with the ratio stipulated in the award by the learned Tribunal.

[9] In the light of the position as noted above, although the future prospects are to be calculated @ 40% of the established income of the

deceased, yet in the net result, the compensation payable stands enhanced as the learned Tribunal wrongly deducted income tax @ 10% in view of the statements of learned counsel for the parties.

[10] Accordingly, appeal is disposed of by modifying Award dated 29.11.2016 passed by the learned Tribunal to the extent as noted above.

(B.S. Walia)
Judge

08.03.2019
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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No.