IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

241 XOBJC-123-CII of 2017 (O&M) in/and

FAO-2681-2017 (O&M)

Date of decision: 14.11.2019

NEW INDIA ASSURANCE CO LTD ... Appellant

Versus

MAHINDER KAUR & ORS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate for the appellant.
Mr. Sanjeev Patiyal, Advocate
for respondent No.1/cross objector.
Mr. GS Jagpal, Advocate for respondents No.5 and 6.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.2681 of 2017 and cross objections No.123-CII-2017 as these have emerged out of award dated 30.01.2017 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby compensation has been assessed on account of death of Inderjit Singh in a motor vehicular accident that took place on 23.06.2016.

FAO No.2681 of 2017 has been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the cross objections have been filed by the claimant/respondent No.1.

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.31,68,420/-, detailed hereunder:-

Monthly income of the deceased	Rs.30,000/-
Addition in income for future prospects	30%
Multiplier	13
Deduction for personal expenses	50%
Loss of dependency	Rs.30,42,000/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Medical expenses	Rs.1420/-

Counsel for the appellant would argue that Tribunal has assessed income of the deceased by taking into consideration instalments of loan paid to various banks/financial institutions, notice whereof has been taken in para 21 of the award. It is further argued that though the claimants have produced certain documents qua financial status of M/s Inderjit Singh Boreing Company but the same were not proved in accordance with law, therefore, findings of the Tribunal assessing income at Rs.30,000/- per month cannot be allowed to sustain.

Counsel for respondent No.1/claimant, on the contrary, has supported findings of the Tribunal with regard to assessment of income. He would state that in case the Court is not convinced to assess income of the deceased on the basis of payment of loans, the matter may be remitted to the Tribunal for making assessment afresh on the basis of evidence already on record and additional evidence to be adduced by the claimants in order to prove the documents with regard to business affairs of the deceased.

Perusal of the records would reveal that Tribunal assessed income of the deceased primarily on the basis of payments made by way of instalments to discharge liability towards loan obtained by the deceased. A specific plea was raised by the claimants that deceased was proprietor of M/s Inderjit Singh Boreing Company and even had raised loans for the purchase of plant and machinery etc. However, they failed to adduce cogent and convincing evidence if the said proprietorship concern had been earning profits or instalments were paid out of income earned by the said concern. They have also placed on record certain documents but failed to prove the same, in accordance with law.

Taking into consideration the legislative intent that Tribunal owes an obligation to assess just and reasonable compensation, interest of justice commands that assessment made by the Tribunal be set aside and the matter be remitted to the Tribunal for making assessment afresh on the basis of materials already on record and additional evidence to be adduced by the claimants.

In view of what has been discussed hereinbefore, the appeal and cross objections stand disposed of. Findings of the Tribunal with regard to assessment of compensation are set aside. The matter is remitted to the Tribunal for making assessment afresh on the basis of materials already on record and additional evidence to be adduced by the claimants and evidence in rebuttal, if any, produced by the insurance company. Parties through their counsel are directed to appear before the Tribunal on 16.12.2019. In the meantime, the insurance company shall not be entitle to recover the amount of compensation already paid to the claimants. The Tribunal shall complete assessment of compensation afresh within a period of four months of parties putting in appearance. The Registry is directed to send back original records of the Tribunal, if received by this Court.

14.11.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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