IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 09.04.2019
FAO No.2720 of 2017 (O&M)

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

Versus

Naseem Akhtar and others ... Respondents

FAO No.3998 of 2017 (O&M)

Naseem Akhtar and others ... Appellants

Versus

Irshad and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashish Gupta, Advocate for the claimants.
None for the insurance company.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO No.2720 and 3998 of 2017 as these have emerged out of the same award dated 01.03.2017 passed by the Motor Accidents Claims Tribunal, Mewat whereby compensation has been assessed on account of death of Smt. Hadisan wife of Naseem Akhtar in a motor vehicular accident that took place on 09.07.2016.

FAO No.2720 of 2017 has been field by Universal Sompo 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.

As noticed in order dated 13.03.2018, insurance company has preferred the appeal only qua quantum of compensation.

The Tribunal awarded Rs.24,05,000/-, detailed hereunder:-

1. Monthly value of services of the deceased	Rs.11,000/-
2. Multiplier	15
3. Loss of dependency	Rs.19,80,000/-
4. Expenses on funeral	Rs.25,000/-
5. Loss of estate	Rs.1,00,000/-
6. Loss of expectation of life of deceased	Rs.1,00,000/-
7. Loss of consortium	Rs.1,00,000/-
8. Loss of love and affection	Rs.1,00,000/-

Counsel for the claimants would fairly concede that there is no scope for enhancement of compensation in addition to what has been allowed by the Tribunal.

There is no representation on behalf of the insurance company earlier being represented by a counsel.

The Tribunal has assessed value of services of the deceased @ Rs.11,000/- per month by taking into consideration notification issued by the State of Haryana with regard to minimum wage and judgment of this Court **United India Insurance Co. Ltd. VS. Sube Singh and others, FAO No.218 of 2014, decided on 15.01.2014.**

The application for compensation has been filed by the husband, two adult daughters and one adult son of the deceased but they are not married. There is nothing on record suggestive of the fact as to what is the financial status of family of the deceased. At the same time, family of the deceased had been deprived of her services as a house maker. A house maker has multifarious duties to perform. She cannot be compared with an unskilled labour as has been held by Hon'ble the Supreme Court in **Arun Kumar Aggarwal and another Vs. National Insurance Company and others, 2010(3) RCR (Civil) 827.** Taking into consideration the aforesaid, value of services of the deceased is assessed at Rs.10,000/- per month.

The Tribunal has assessed age of the deceased at 36 years. The occurrence in question took place on 09.07.2016 and application for claim was made on 22.07.2016. The eldest child of the family is stated to be 21 years old. It is difficult to believe that the deceased gave birth to a child when she was just 15 years old. Taking into consideration ages of the children of deceased, the deceased is held to be more than 40 years of age. Accordingly, the admissible multiplier is 14. In this manner, loss of dependency is calculated at Rs.16,80,000/- (10000 x 12 x 14).

The Tribunal has awarded Rs.4,25,000/-, under conventional heads, by relying upon judgment of Hon'ble the Supreme Court **Kalpanaraj and others VS. Tamil Nadu State Transport Corporation, 2014 ACJ (SC) 1388.** The case of **Kalpanaraj and others's case (supra)** pertain to death of husband of Kalpanaraj and father of other claimants in a motor vehicular accident. The High Court assessed income of the deceased on the basis of income tax return produced on record. In para 9 of the judgment, it has been noticed that as per income tax return of the financial year 1994-95, deceased was earning Rs.88,660/- per annum or Rs.7330/- per month. 30% increase in future prospects of income was allowed as per legal principle laid down in **Santosh Devi Vs. National Insurance Co. Ltd. and others, 2012(2) RCR (Civil) 882**. By applying multiplier of 13, since the deceased was 46 years of age, loss of dependency was calculated at Rs.9,91,016/-. It is astonishing that the Tribunal without appreciating that compensation in **Kalpanaraj and others's case (supra)** was assessed in regard to death of bread earner of the family who had even filed income tax return in respect of his income for the relevant financial year 1994-95 proceeded to allow a whopping sum of Rs.4,25,000/- under conventional heads in a case where loss of dependency has been calculated by taking into consideration value of services of the deceased as a house-maker. In this view of the matter, it can safely be held that awarding compensation of Rs.4,25,000/- under conventional heads is the result of non-application of mind, thus, cannot be allowed to sustain. I would hasten to add that the Tribunal has even awarded a sum of Rs.1 lakh towards loss of estate, despite the fact that deceased had no income and loss of dependency was calculated on the basis of loss of her services as a house-maker. Taking into consideration 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**, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs.55,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of consortium	Rs.40,000/-

Total compensation is Rs.17,35,000/- and the compensation allowed by the Tribunal is reduced to the extent of Rs.6,70,000/- (24,05,000 - 17,35,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of the above, the appeal filed by the insurance company is partly allowed in the aforesaid terms. However, the appeal preferred by the claimants is dismissed. A copy of the judgment be sent to the officer concerned.

09.04.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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