239 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3261 of 2017 (O&M)
Date of Decision: 16.10.2019

SBI General Insurance Company Ltd.
.....Appellant

Versus

Bimla Devi and others
........Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Suman Jain, Advocate
for the appellant.

Mr. Vivek Khatri, Advocate
for respondent Nos.1 to 4.

NIRMALJIT KAUR, J. (ORAL)

The present appeal is filed by the Insurance Company challenging the award dated 19.12.2016 passed by the Motor Accidents Claim Tribunal, Jhajjar (for short, the Tribunal).

While praying for modification of the award, learned counsel for the appellant raised three fold argument. In the first argument raised by learned counsel for the appellant regarding the involvement of the vehicle, it is stated that the present case is a hit and run case and therefore, number of the vehicle was subsequently introduced as no mechanical inspection report has been placed on record. Further, the statement of eye-witness could not be relied upon because admittedly the witness too informed about the incident after almost two days of the accident. The second argument raised is with respect to the quantum. It is contended that the deceased was stated to be working as Clerk at his brick-klin but no evidence has been placed on record. Therefore, the minimum wages @ Rs.5,547/- should have been taken into consideration instead of Rs.11,000/-. The third argument raised is with respect to the amount granted under the conventional heads. It is stated that almost Rs.1,00,000/- has been awarded to claimant No.1 and Rs.1,50,000/- has been awarded to claimants No.2 to 4 (i.e. Rs.50,000/- to each of the claimants) and Rs.25,000/- has been awarded under the head of funeral expenses and transportation, whereas, only Rs.70,000/- should have been granted. Therefore, excess amount of Rs.2,75,000/- has been granted. It is further stated that the calculation too has been wrongly made.

Learned counsel for respondent Nos.1 to 4 on the other hand submitted that the calculation in the award stands corrected by the subsequent order dated 13.02.2017 passed by the Tribunal. Admittedly, the final awarded amount was Rs.17,60,000/-. Copy of amended award is taken on record.

The first argument of learned counsel for the appellant has no merit. Admittedly, the FIR was registered and in pursuance to the investigation, challan too has been filed. Therefore, to conclude that it was a hit and run case just on the asking of the appellant-Insurance Company cannot be accepted. The second argument is that minimum @ Rs.5544/- wages should have been taken into consideration while determining the income too deserves to be rejected. Enough evidence has been placed on record in the form of receipts issued by the deceased, while working as Clerk in the brick-klin, as also the certificate Annexure P-15, issued by the Employer of the deceased confirming the employment of the deceased in his brick-klin. The deceased was survived by as many as four claimants. Therefore, it cannot be said that at that point of time, he was still unemployed and that his earning was only to the extent of minimum wages.

However, there is merit in the third argument with respect to the amount granted under the conventional heads.

Learned counsel for respondent Nos.1 to 4 too does not dispute that the claimants are entitled to only Rs.70,000/- under the conventional heads as per judgment rendered by Hon'ble the Apex Court in case National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680.

At the same time, learned counsel for the appellant/Insurance Company is not able to dispute that in case the judgment rendered by Hon'ble the Apex Court in case Pranay Sethi (supra) is to be followed, then the respondents/claimants are also entitled to 40% towards future prospects. Accordingly, the award requires to be modified with respect to the amount granted under the conventional heads as well as the amount to be now awarded under the head of future prospects to the extent of 40%.

In view of the above discussions, the award dated 19.12.2016 passed by the Tribunal is modified as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	₹11,000/- per month (11000 x 12 = 132000 per annum)
2	Future Prospects	40% (1,32,000 x 40% = ₹52800) ₹132000 + 52800 = ₹1,84,800/-
3	Deduction	1/4th 1/4th of 184800 = ₹46200/- (184800 – 46200 = ₹138600/-
4	Multiplier	15
5	Compensation awarded	138600 x 15 = 20,79,000/-
6	Conventional Heads	₹70000/-
7	Total	₹21,49,000/-
8	Compensation awarded by the Tribunal	₹17,60,000/-
9	Differences	₹2149000 – 1760000 = ₹389000/-

Thus, the enhanced compensation of ₹3,89,000/- be paid to the respondents/claimants within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition till its realization. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

The appeal is disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

16.10.2019
sandeep

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No