In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 28.2.2019

FAO No. 1029 of 2018(O&M)

Sonia Mittal and others

---Appellants

versus

Harwinder Singh @ Raju and others

---Respondents

FAO No. 1186 of 2018(O&M)

Sanjeev Mittal and another

---Appellants

versus

Harwinder Singh @ Raju and others

---Respondents

FAO No. 1208 of 2018(O&M)

The Oriental Insurance Company Limited

---Appellant

versus

Sanjeev Mittal and others

---Respondents

FAO No. 1215 of 2018(O&M)

The Oriental Insurance Company Limited

---Appellant

versus

Sonia Mittal and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.S.Panag, Advocate
for the claimants
Mr. Sanjiv Pabbi, Advocate,

for the insurance company

***

Rekha Mittal, J.

This order will dispose of FAO Nos. 1029, 1186, 1208 and 1215 of 2018 as these have emerged out of the same accident that took place on 27.10.2015 in which Dharamvir Mittal and Ghanshyam sustained injuries that proved fatal.

FAO Nos. 1029 and 1186 of 2018 have been filed by the claimants seeking enhancement of compensation whereas the other appeals have been preferred by the insurance company to assail the award.

Counsel for the insurance company would fairly inform that the appeals have been preferred primarily to assail quantum of compensation assessed by the Tribunal.

FAO No. 1186 and 1208 of 2018

The Motor Accidents Claims Tribunal, Ludhiana (in short "the Tribunal") has awarded Rs.15,81,000/-, detailed hereunder:-

Annual income of the deceased	Rs. 1,20,000/-
Addition in income for future prospects	30%
Deduction for personal and living expenses	1/3rd
Multiplier	14
Loss of dependency	Rs. 14,56,000/-
Loss of care and guidance to minor children	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the insurance company would argue that addition in income for future prospects is liable to be restricted to 25% and compensation under conventional heads to the extent of 30,000/- in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034**.

Counsel representing the claimants, on the contrary, would pray that compensation allowed by the Tribunal may be kept intact. It is argued that compensation under conventional heads may be allowed by extending benefit of loss of consortium to children of the deceased in the light of judgment of Hon'ble the Supreme Court **Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333**.

The contention of the insurance company that addition in income for future prospects should be 25% is meritorious and accepted. Accordingly, loss of dependency is calculated at Rs. 14,00,000/-[10,000 x 12x 14 = 16,80,000 +4,20,000(25%)= 21,00,000- 7,00,000 (1/3rd)]

Under conventional heads, the Tribunal has awarded a sum of Rs. 1,25,000/-, noticed hereinbefore. Taking into consideration the decision by a Constitution Bench in **Pranay Sethi and others' case (supra)** and three Judge Bench decision in **Sebastiani Lakra and others' case (supra)** rendered after decision in **Magma General Insurance Company Limited's case (supra)** by two Judge Bench, it is difficult to accept contention of the claimants that children of the deceased are entitle to loss of consortium qua death of their father. In this view of the matter, compensation under conventional heads is modified to the effect that claimants shall be entitle to Rs. 30,000/-, detailed hereunder:-

Funeral expenses Rs. 15,000/-

Loss of estate Rs. 15,000/-

Total compensation is Rs. 14,30,000/- and compensation awarded by the Tribunal is reduced to extent of Rs. 1,51,000/- (15,81,000-14,30,000). 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, appeal preferred by the claimants is dismissed. However, appeal preferred by the insurance company is partly allowed in the aforesaid terms.

FAO Nos. 1029 and 1215 of 2018

The Tribunal has awarded Rs.16,81,000/-, detailed hereunder:-

Annual income of the deceased	Rs. 1,20,000/-
Addition in income for future prospects	30%
Deduction for personal and living expenses	1/3rd
Multiplier	14
Loss of dependency	Rs. 14,56,000/-
Loss of care and guidance to minor children	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-
Loss of consortium	Rs. 1,00,000/-

In view of discussion made hereinbefore, loss of dependency is calculated at Rs. 14,00,000/-.

Under conventional heads, the Tribunal has awarded a sum of Rs. 2,25,000/-, noticed hereinbefore and the same is modified to the effect that claimants shall be entitle to Rs. 70,000/- in the light of judgments of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra)** and

Sebastiani Lakra and others' case (supra), detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 14,70,000/- and compensation awarded by the Tribunal is reduced to extent of Rs. 2,11,000/- (16,81,000-14,70,000). 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, appeal preferred by the claimants is dismissed. However, appeal preferred by the insurance company is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

28.2.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No