IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3766-2017 (O&M)
Date of Decision: 24.7.2019

National Insurance Company Limited .....Appellant

Versus

Priyam Saini and others ....Respondents

FAO-3988-2018 (O&M)

Priyam Saini and others .....Appellants

Versus

Raj Singh and others ....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Satpal Dhamija, Advocate, for the Insurance Company-appellant in FAO-3766-2017 and for Insurance Company-respondent in FAO-3988-2018.

Mr. Neeraj Gupta, Advocate, for the appellants in FAO-3988-2018 and for the respondents in FAO-3766-2017.

NIRMALJIT KAUR, J. (ORAL)

Both the above mentioned appeals shall stand decided by this common order.

FAO-3766-2017 is filed by the Insurance Company for setting aside the award dated 30.1.2017 passed by the Motor Accident Claims Tribunal, Gurugram (for short, 'the Tribunal'), vide which, claim of the claimants was allowed by granting a total amount of ₹ 52,74,000/-.

FAO-3988-2018 is filed by the claimants seeking enhancement of the income of the deceased.

While praying for setting aside the award of the Tribunal, learned counsel for the Insurance Company submitted that FIR was lodged against an unknown vehicle and there is no evidence as to when the police was informed about the vehicle. Different version was given by the eyewitness PW-4. As per the statement of one Deepak Yadav, the driver of the vehicle fled away from the spot alongwith the dumper. Therefore, the whole case is the outcome of the connivance between the claimants and police.

Heard.

In pursuance to the FIR registered, the matter was investigated and the driver of the offending vehicle has been charge-sheeted. Presently, he is facing trial. Moreover, PW-4, who is the complainant, specifically stated that it was the dumper, which was involved. Similar statement of PW-7 with respect to the involvement of the dumper was recorded. Even in the FIR, dumper is mentioned and not any other vehicle i.e. car, motorcycle or tractor etc. Thus, the fact that it was the dumper and after investigation it was found that this very dumper was involved is sufficient for the Tribunal to have arrived at the conclusion that it was dumper in question that was involved. Hence, no ground to set aside the award on this reason is made out.

The second argument of learned counsel for the Insurance Company is with respect to the quantum of amount as assessed by the Tribunal. It is stated that the amount towards the consortium, love and affection as well as funeral expenses is on the higher side. As per the judgment of Hon'ble the Apex Court rendered in the case of National Insurance Company Limited vs. Pranay Sethi and others, 2017 AIR (SC) 5157, the claimants are entitled to only a total amount of ₹ 70,000/-. This Court may would have refused the quantum towards the aforesaid heads in view of the judgment in the case of Pranay Sethi (supra), but for the fact that the by way of another judgment rendered in the case of Magma General Insurance Co. Ltd. vs. Nanu Ram alias Chuhru Ram and others, 2018(4)

RCR (Civil) 333, the amount has been ordered to be granted to each of other claimants like brother, sister, son and daughter etc. as well to the extent of ₹ 40,000/- each. In case, the same is taken to be granted to each one, the amount so already awarded may get balanced out. Hence, this Court does not deem it proper to interfere in the amount so awarded towards consortium, love and affection as well as funeral expenses to the extent of ₹ 2,25,000/- in the present case. Accordingly, no interference is called for.

The third argument raised by learned counsel for the Insurance Company is with respect to the dependancy of the father of the deceased. It is contended that the dependancy of the father has not been proved. The said argument too has no merit. In fact, the father of the deceased stepped into the witness box as PW-5 and stated that he was dependent on the income of the deceased.

The last argument raised by learned counsel for the Insurance Company is with respect to the future prospects. It is stated that future prospects should have been @ 40% and not @ 50% on the ground that the deceased was not a government employee, but was working in a private firm on contactual basis. The said argument too has no merit. A finding has been duly recorded that the deceased was getting net income of ₹ 22,000/- per month after deducting various perks being granted to the deceased. In fact, a detail discussions has taken place in para No.19 of the award of the Tribunal to say that the deceased was even getting increment of ₹ 32,307/- per annum from 1.4.2015 onwards. Thus, his future prospects could be decreased for the reason that he was not a Government employee.

At the same time FAO-3988-2018 is filed by the claimants seeking enhancement of the said income on the ground that the income includes the amount being granted towards other perks and allowances in view of the judgment of Hon'ble the Apex Court rendered in the case of National Insurance Company Ltd. vs. Indira Srivastava and others, 2008(1) RCR (Civil) 359, as the some facilities are provided in private sectors, whereby the entire family stands to benefit and it should be relevant consideration for the purpose of computation of total income. The claimants are not entitled to for the enhancement in the income so calculated by the Tribunal in as much as, the perks that were being granted were towards the books and periodicals, washing allowance, conveyance, which were total to the deceased and not for the benefit of the members of the family.

This Court, therefore, finds that the amount already assessed by the Tribunal with respect to the income is fair and justfy and neither required to be enhanced nor reduced in any manner.

In view of the above, this Court finds no merit in both the appeals, the same are dismissed accordingly.

(NIRMALJIT KAUR)
JUDGE

24.7.2019
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No