IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3814 of 2017 (O&M)
Date of Decision: 16.07.2019

National Insurance Company Ltd.

...... Appellant

VERSUS

Jaswant Kaur and others

..... Respondents

*****

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Paul S. Saini, Advocate,
for the appellant.

Mr. Vikram Bali, Advocate,
for respondent No.1.

Mr. Inder Pal Singh, Advocate,
for respondent No.2.

*****

JAISHREE THAKUR, J.

CM-12527-CII-2019

This is an application that has been filed under Order 22 Rule 4 C.P.C. seeking to implead legal heirs of deceased Jaswant Kaur, respondent No.1, who is stated to have died.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

Sohan Singh, the sole legal heir of deceased respondent No.1 as mentioned in para 2 of the application is impleaded as such.

Amended memo of parties is taken on the record.

Mr. Vikram Bali, Advocate, has filed his power of attorney on behalf of Sohan Singh, newly impleaded legal representative of respondent No.1.

FAO No. 3814 of 2017

1. The instant appeal has been filed by the appellant - National Insurance Company Ltd. challenging the order dated 27.02.2017 whereby the Motor Accident Claims Tribunal, SAS Nagar Mohali (hereinafter referred to as the 'Tribunal') allowed compensation to the claimants to the tune of ₹ 10,38,000/- along with interest @ 6% per annum from the date of filing the petition till realization of the compensation amount.

2. In brief, facts are that on account of death of Gurnam Singh in a Motor Vehicular Accident, his mother Jaswant Kaur, filed a claim petition under Section 166 of the Motor Vehicles Act seeking compensation alleging that on 30.04.2015 her son Gurnam Singh was going from Kharar towards village Abheypur riding motor cycle bearing No. PB-27-B-1975. When he was crossing Medicine Factory village Abheypur, offending canter No. PB-65-L-6755 came from the

opposite side, which was being driven rashly and at a high speed by its driver Daljit Singh. In an attempt to overtake another vehicle running ahead of it, the canter came on the wrong side and struck against the motorcycle being driven by her son, as a result of which Gurnam Singh fell on the road and suffered serious injuries and died at the spot, regarding which an FIR was registered at Police Station City Kharar. It was alleged that he was earning a sum of ₹ 40,000/- per month by running a dhabra (restaurant) at Phase-V, SAS Nagar Mohali. At the time of his death, Gurnam Singh was 50 years of age. He was the sole earning member in the family as her husband had already died and the compensation to the tune of ₹ 50 lacs was prayed for.

3. Upon notice, respondent No.1 appeared and filed written statement denying all the contents of the claim petition with a further reply that accident occurred due to own negligence of the deceased and was prayed that the claim petition may be dismissed.

4. On similar lines, a separate written statement was filed by respondent No.2, the owner of the offending vehicle. Thereafter, issues were framed and respective evidence was led by the parties apart from tendering relevant documents. On appreciation of evidence, the Tribunal decided issue no.1 in favour of the claimant while holding that Gurnam Singh died due to rash and negligent driving of respondent No.1 Daljit Singh. Thereafter, on assessment of

the facts and evidence before it, the net income of the deceased was assessed to be ₹ 9,000/- per month and ₹ 1,08,000/- per annum. After deducting 50% towards personal expenses, his annual dependency was assessed at ₹ 54,000/-. Keeping in view the age of the deceased to be 50 years at the time of the accident, multiplier was taken as 13 and total amount of dependency was calculated at ₹ 7,02,000/-.By applying the ratio of judgment rendered in ***Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403 (SC) : 2013(9) SCC 54: 2013(3) RCR (Civil) 170***, the Tribunal allowed future prospects @ 30% and by adding the same, the total amount of dependency came out to be ₹ 9,12,600/-. Apart from this a sum of ₹ 25,000/- was allowed towards funeral expenses and a sum of ₹ 1,00,000/- was allowed towards love and affection. The total compensation was calculated at ₹ 10,37,600/-, which was rounded of ₹ 10,38,000 along with interest @ 6% per annum from the date of filing the petition till realization of the compensation amount, which has now been challenged in the instant appeal by the Insurance Company.

5. Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the higher side. He further submits that the Tribunal has erred in taking the income of the deceased to be ₹ 9,000/- per month despite the fact that no evidence was led by the claimant to prove the avocation or income of the deceased. He further submits that if the deceased is to be taken

as a skilled labourer, the minimum wages for a skilled worked in the State of Punjab on the date of accident was not more than ₹ 6,000/- per month.

6. Learned counsel for the appellants further submits that the Tribunal has erred by making a deduction of 50% from the notional income of the deceased, keeping in view the fact that she was not at all dependent upon the deceased inasmuch as per the claimant's own statement three other sons, namely Mohan Singh, Sohan Singh and Dilawar Singh, are still alive who can very well look after their aged mother-claimant. Considering the fact that out of four sons, only one has died, resulting in loss of dependency to the extent of 25% only i.e. equivalent to the share of contribution of 4^{th} son who has died.

7. Learned counsel for the appellants further submits that the Tribunal has erred in applying the multiplier of 13 and the multiplier of 5 should have been applied on the basis of the age of the claimant as per the settled law of the Supreme Court. He further submits that the Tribunal has erred in granting future prospects @ 30% since the claimant has failed to prove any avocation, business, employment or income of the deceased. In view of law the law laid down by the Apex Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, the award passed by the Tribunal deserves to be set aside.

8. Learned counsel appearing on behalf of the claimant-respondent contends that the compensation awarded for the accident that occurred is just and proper which does not call for any interference by this Court.

9. I have heard learned counsel for the parties and find that the award that has been passed needs to be modified in terms of the judgment rendered by the Constitutional Bench of the Hon'ble Supreme Court in ***Pranay Sethi and others*** case (supra).

10. It is not in dispute that there is no evidence available on the record to substantiate that the deceased was earning handsome amount as claimed by running a Dhaba. Since, there is no proof of earning of the deceased, by treating him to be a labour, his income is being taken to be ₹ 7,000/- month. Hence, his annual income comes to ₹ 84,000/-. The claimant had produced a copy of "Aadhar Card" of Gurnam Singh as Ex. P-1, wherein the date of birth of the deceased Gurnam Singh was recorded as 10.05.1965. Hence, the Tribunal has rightly taken his age as 50 years at the time of his death. Resultantly, keeping in view the judgment rendered by the Hon'ble Supreme Court in ***Smt. Sarla Verma vs. Delhi Transport Corporation and another, 2009(3) PLR 22 : 2009(3) RCR (Civil) 77 : 2009(6) SCC 121,*** the future prospects should be 25% being self employed. The Tribunal has rightly come to the conclusion that the deceased was a bachelor and his family comprised of only his parents, deduction of 50%

towards personal expenses and living expenses is just and proper. Consequently, keeping in view the judgment of the Supreme Court in ***Pranay Sethi and others*** case (supra), the compensation is re-worked and tabulated as under :-

Sr. No	***Heads***	***Calculation***
(i)	Name of the deceased	Gurnam Singh
(ii)	Date of accident	30.04.2015
(iii)	Age of the deceased	50 years
(iv)	Monthly income of the deceased	₹ 7,000/-
(v)	25% of (iv) is to be added towards future prospects	(₹ 7,000 + ₹ 1750) = ₹ 8,750/- per month
(vi)	1/2 of (v) above deducted towards personal expenses	(₹ 8,750/- - ₹ 4,375) = ₹ 4,375/- per month
(vii)	Compensation calculated after applying the multiplier of 13	₹ 4,375/- x 12 x 13 = ₹ 6,82,500/-
(viii)	Funeral expenses	₹ 15,000/-
(viii)	Loss of Estate	₹ 15,000/-
	Total	₹ 7,12,500 /-

11. In view of the above, the appeal is allowed and consequently the compensation awarded is reduced from ₹10,38,000/- to ₹7,12,500 /-. Apart from the compensation assessed at ₹ 7,12,500 /-, this Court by order dated 18.07.2017 has enhanced the litigation expenses from ₹ 1,000/- to ₹ 50,000/- and had directed the same to be deposited, which the claimant would be entitled to.

12. The claimant-respondent No.1 is directed to refund the excess amount i.e. beyond ₹ 7,12,500 /-, if any, received to the appellant – Insurance Company with interest @ 6% per annum from

the date of the excess amount received till realization.

13. The appeal is allowed in the aforesaid terms.

16.07.2019 **(JAISHREE THAKUR)**
Satyawan **JUDGE**

Whether speaking/reasoned Yes.

Whether reportable No.