IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 13.12.2019

FAO No.1566 of 2018 (O&M)

The New India Assurance Co. Ltd. .. Appellant

Versus

Smt. Kamla Devi and others .. Respondents

FAO No.1572 of 2018 (O&M)

The New India Assurance Co. Ltd. .. Appellant

Versus

Smt. Sarwan Devi and others .. Respondents

FAO No.5063 of 2018 (O&M)

Smt. Kamla Devi and others .. Appellants

Versus

Nasib Chand and others .. Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Gupta, Advocate
for the insurance company (FAO Nos.1566 and 1572 of 2018).

Mr. RC Gupta, Advocate
for the insurance company (FAO No.5063 of 2018).

Mr. Sushil Sheoran, Advocate
for the claimants (FAO Nos.1566 and 5063 of 2018).

Mr. Hem Raj Bhardwaj, Advocate
for the owner.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.1566, 1572 and 5063 of 2018 as these have emerged out of the same award dated 06.12.2017 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Vijay Kumar and Chander Shekhar in a motor vehicular accident that took place on 19.06.2015.

FAO Nos.1566 and 1572 of 2018 have been filed by New India Assurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas FAO No.5063 of 2018 has been filed by claimants Kamla Devi and others seeking enhancement of compensation with regard to death of Vijay Kumar.

CM No.6045-CII of 2018 in FAO No.1566 of 2018

Heard.

Allowed as prayed for. Delay of 09 days in filing the appeal stands condoned.

FAO Nos.1566 and 5063 of 2018

Counsel for the insurance company would inform that appeal has been filed to assail quantum of compensation and findings of the Tribunal on the question of driving licence.

The Tribunal awarded Rs.1,00,000/- under conventional heads whereas claim for loss of dependency has been rejected as widow of the deceased shall be entitle to financial assistance to the tune of Rs.74,82,553/- from Government of Haryana under the Haryana

Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006').

Counsel for the insurance company would argue that compensation allowed under conventional heads may be restricted to Rs.70,000/-. For this purpose, reference has been made to 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**.

Counsel representing the claimants, on the contrary, would argue that only 50% of compassionate assistance available under the Rules of 2006 is amenable to deduction and claimants shall be entitle to additional amount after deducting 50% of Rs.74,82,553/-. For this purpose, reference has been made to judgment of this Court **Kamla Devi and others Vs. Sahib Singh and others, FAO No.3064 of 2013, decided on 30.11.2017.**

Counsel for the insurance company, in reply, would argue that Tribunal assessed compensation to the tune of Rs.64,10,272/- but liability to pay income tax has not been taken into account while making calculations. He would further submit that insurance company is not liable to pay compensation as licence possessed by driver of offending vehicle i.e. truck bearing No.PB-29-K-7005 is not valid. It is argued that Government of Nagaland issued a communication dated 01.08.2014 wherein it has been mentioned that all licences other than in smart card form shall be treated as cancelled. It is further argued that in the instant case, endorsement authorising driver to drive transport vehicle is dated 17.11.2014 and the said driver never obtained licence from the concerned authority in smart card form. It is further argued that taking into consideration the public information given vide letter dated 01.08.2014, it can safely be inferred that endorsement of transport dated 17.11.2014 is not valid, therefore, driver was not duly licensed to drive the offending vehicle on the ill-fated day.

Counsel representing respondent No.5-owner would submit that no such document dated 01.08.2014 was produced before the Tribunal much less proved in accordance with law. It is further argued that licence possessed by the driver was issued prior to 01.08.2014 but endorsement with regard to transport was made on 17.11.2014. The insurance company did not adduce any evidence to establish that licence possessed by the driver was not issued by the concerned authority or endorsement thereon of LTV is not valid and genuine.

Indisputably, Vijay Kumar was an employee of Haryana Government as he was working as Welding Instructor in ITI, Tohana. Salary certificate Ex.P3 shows that gross salary of Vijay Kumar was Rs.32,866/- per month and annual salary is Rs.3,94,392/-. After deducting income tax (Rs.12,812/-), net annual income is Rs.3,81,580/-. Appellants shall be entitle to addition in income for future prospects @ 50%, rightly granted by the Tribunal. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.61,05,280/- [(3,81,580 x 16) + (50% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.61,75,280/-.

This brings the Court to deduction in respect of financial assistance available to family of the deceased under the Rules of 2006. Counsel for the claimants would fairly concede that the family shall be entitle to financial assistance to the tune of Rs.74,82,553/- for remaining 15 years of service of the deceased.

Accordingly, entire amount of financial assistance shall be deducted from the compensation assessed, in the light of judgment of Hon'ble the Supreme Court **Reliance General Insurance Co. Ltd. Vs. Shashi Sharma, 2016(4) RCR (Civil) 569.** In view of the above, claimants are not entitle for loss of dependency and compensation awarded by the Tribunal under conventional heads is reduced to the extent of Rs.30,000/- (1,00,000 – 70,000). The insurance company shall be entitle to recover the excess amount i.e. Rs.30,000/-, if already paid, by filing an application before the Tribunal.

For the foregoing reasons, the appeals are disposed of in the aforesaid terms.

FAO No.1572 of 2018

Compensation assessed by the Tribunal is reduced to the extent of Rs.60,000/- (Rs.1,30,000 – 70,000). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

13.12.2019
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(REKHA MITTAL)
JUDGE

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