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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.2045 of 2018 (O&M)
Date of Decision : 08.02.2019

THE ORIENTAL INSURANCE COMPANY LIMITED.
....APPELLANT
V/S

KEWALA DEVI AND OTHERS.
....RESPONDENTS

2. FAO No.2567 of 2018 (O&M)

KEWALA DEVI AND OTHERS
....APPELLANTS
V/S

RAKESH AND OTHERS
....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Ram Avtar, Advocate for the appellant in **FAO-2045-2018** & for respondent No.3 **in FAO-2567-2018**.

Mr. Munish Raj Chaudhary, Legal Aid Counsel for respondent Nos.1 to 6 in **FAO-2045-2018** and for the appellants in **FAO-2567-2018**.

B.S. WALIA, J. (ORAL)

1. This judgment shall decide FAO Nos.2045 & 2567 of 2018. While FAO No.2045 of 2018 has been filed by the Insurance Company, challenging the award and seeking reduction of compensation, FAO No.2567 of 2018 has been filed by the claimants, seeking enhancement of compensation awarded.

2. Learned counsel for the Insurance Company contended that award dated 14.12.2017, passed by the learned Motor Accidents Claims Tribunal, Yamuna

Nagar at Jagadhari (hereinafter referred to as the Tribunal), awarding compensation of ₹14,87,000/- is legally unsustainable as income of the deceased assessed at ₹7400/- per month had been assessed on the higher side, compensation of ₹1,00,000/-awarded on account of loss of love and affection was not payable, besides deduction from the income of the deceased had been wrongly made @ $1/5^{th}$ instead of $1/4^{th}$ of the income of the deceased in view of the deceased having left behind 6 dependants.

3. Learned Legal Aid Counsel, Mr. Munish Rai Chaudhary, Advocate, appearing on behalf of the Claimants states that once Hon'ble the High Court while issuing notice of motion had recorded that the income of the deceased had rightly been taken into account by the Tribunal, then said issue could not be agitated by the appellant any further. Learned counsel further contended that the deceased was an unskilled laborer and was below the age of 40 years, therefore, 40% of the established income of the deceased was liable to be taken into account towards future prospects, while computing the compensation payable in accordance with paragraph No. 61(iv) of the decision in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', ***2017(4) RCR (Civil) 1009.*** Learned Counsel lastly contended that in addition to the payment on account of loss of spousal consortium, a sum of ₹40,000/- is also payable on account of loss of parental consortium to each of the three children of the deceased in view of paragraph No.8.7 of the decision in '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others***', *2018(4) RCR (Civil) 333.*

4. Faced with the claim qua loss of spousal/ parental consortium, learned counsel for the Insurance Company contended that in view of subsequent decision of Hon'ble the Supreme Court in '***Vimla Devi*** *versus* ***National Insurance***

Company Limited and others', *2019(1) RCR (Civil) 86*, involving a widow and two children of the deceased, compensation on account of loss of spousal/parental consortium was restricted to ₹1,00,000/-. Learned counsel contended that in the circumstances, compensation on account of loss of spousal/parental consortium in the instant case be also restricted to ₹1,00,000/-.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, while issuing notice of motion on 27.04.2018, the court had recorded that income of the deceased had rightly been taken into account by the Tribunal and the same was not required to be interfered with. The only points, which now survive for consideration are whether the compensation awarded on account of conventional heads to the claimants is on the higher side, whether compensation on account of loss of love and affection is payable, whether deduction from the income of the deceased was to be made @ 1/4th instead of @ 1/5th of the income of the deceased, admissibility of the claim for award of future prospects, compensation on account of loss of parental consortium besides award of compensation for loss of estate.

7. No amount was awarded by the Tribunal on account of future prospects whereas on account of the deceased being an unskilled laborer and below the age of 40 years, 40% of the established income of the deceased was liable to be taken into account towards future prospects, while computing the compensation payable in accordance with paragraph No. 61(iv) of the decision in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and others***', ***2017(4) RCR (Civil) 1009.***

8. The Tribunal awarded a sum of ₹15,000/- on account of transportation and last rites, whereas as per paragraph No.61(viii) of the decision of Hon'ble the Supreme Court in '***National Insurance Company Limited*** *versus* ***Pranay Sethi and Others***', *2017(4) RCR (Civil) 1009*, a sum of ₹15,000/- is payable only on

account of funeral expenses and not transportation charges. Accordingly, it is clarified that ₹15,000/- is payable solely on account of funeral expenses and not transportation charges. No amount has been awarded on account of loss of estate. Accordingly, a sum of ₹15,000/- is awarded on account of loss of estate.

9. A sum of ₹40,000/- was awarded on account of loss of spousal consortium, alone whereas as per paragraph No.8.7 of the decision in '***Magma General Insurance Company Limited*** *versus* ***Nanu Ram alias Chuhru Ram and others***', *2018(4) RCR (Civil) 333*, a sum of ₹40,000/- is payable on account of loss of parental consortium to the children of the deceased. Accordingly, each of the three children of the deceased are held entitled to award of ₹40,000/- on account of loss of parental consortium. However in view of subsequent decision of Hon'ble the Supreme Court in '***Vimla Devi*** *versus* ***National Insurance Company Limited and others***', *2019(1) RCR (Civil) 86*, involving a widow and two children of the deceased, compensation on account of loss of spousal/parental consortium was restricted to ₹1,00,000/-. Accordingly, compensation on account of loss of spousal and parental consortium is restricted to ₹1,00,000/- in the instant case also.

10. As regards, the award of ₹1,00,000/- on account of loss of love and affection, the same is held to be not payable. Accordingly, award of the aforementioned amount is set aside.

11. The deceased has six dependents. The learned Tribunal made deduction @ 1/5th of the income of the deceased towards his personal expenses whereas as per paragraph No.27 of the decision in '***Sarla Verma and others*** *versus* ***Delhi Transport Corporation and another***', *2009(6) SCC 121*, in case of 4 to 6 dependents, deduction is to be made @ 1/4th of the income of the deceased.

Accordingly, deduction towards the personal expenses of the deceased is ordered to be made @ 1/4th of the income of the deceased.

12. In the light of the position as noted above, both the appeals are partly allowed and the claimants are held entitled to the following compensation :-

Particulars	**Assessed by the Tribunal (in ₹)**	**Re-assessed by the High Court (in ₹)**
Income assessed	7400	7400
Add: Future Prospects	NIL	40% of 7400=2960
Deductions	1/5th of 7400=1480	1/4th of 10360=2590
Total Income	5920	7770
Multiplier	'15'	'15'
Dependency	7400x12x15=13,32,000/-	7770x12x15=13,98,600/-
Transportation	15,000/-	NIL
Funeral Expenses		15,000/-
Loss of Estate	NIL	15,000/-
Loss of consortium	40,000/-	40,000/- to the widow 40,000/- to each of the three children (i.e. ₹1,20,000/-) Total=1,60,000/- (restricted to ₹1,00,000/- in view of the decision of Hon'ble the Supreme Court in '***Vimla Devi's*** *case (supra)*
Loss of love & affection	1,00,000/-	NIL
Total compensation	**14,87,000/-**	**15,28,600/-**

13. Accordingly, as against compensation of ₹14,87,000/- awarded by the learned Tribunal, Yamuna Nagar at Jagadhari, the respondents-claimants are held entitled to compensation of ₹15,28,600/- along with interest @ 7.5% with effect from the date of claim petition, till date of payment, less amount if any, already paid.

14. Needless to mention, Insurance Company shall deduct tax liability if any *qua* the future prospects, in accordance with the decision in ***Pranay Sethi's*** *case (supra)*.

15. Accordingly, both appeals are partly allowed as per details given above and the award passed by the learned Tribunal is modified to the extent as noted above.

16. Registry is directed to forward a copy of this order to the claimants by registered post.

(B.S. WALIA)
JUDGE

February 08, 2019
'rajneesh'

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