IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 4730 of 2017 and
Xobj No. 219 CII of 2017
Date of decision: 18.09.2019

National Insurance Company Limited ....*Appellant*

Versus

Himmat Kaur and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. D R Bansal, Advocate
for the appellant

Mr. Gaurav Singla, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondents No. 1 to 4/cross objectors

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeal and cross objections as these have emerged out of the same award dated 02.03.2017 passed by the Motor Accidents Claims Tribunal, Patiala (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Sanjiv Virinder Singh in a motor vehicular accident that took place on 01.06.2000.

Counsel for the parties would inform that earlier compensation was assessed vide award dated April 5, 2002 but in appeal filed before this Court, the same was set aside and the matter was remitted to the Tribunal for making fresh assessment vide order dated 21.03.2016 passed in FAO 4201 of 2002.

The Tribunal has awarded Rs.13,77,000/-, detailed hereunder:-

-Monthly income of the deceased	Rs.8,000/-
-Deduction for personal expenses	1/4th
-Multiplier	16
-Loss of dependency	Rs.11,52,000/-
-Funeral expenses	Rs.25,000/-
-Loss of consortium	Rs.1,00,000/-
-Loss of love and affection	Rs.1,00,000/-

Counsel for the insurance company would inform that income of the deceased assessed by the Tribunal is on higher side and needs reduction.

The claimants are the widow, widowed mother, one son and two children who were born out of wedlock of Himmat Kaur with Manbir Singh (since deceased), therefore, claimants No. 3 and 4 cannot assert their claim for loss of dependency. Accordingly, admissible deduction for personal and living expenses should be 1/3rd. Compensation allowed under conventional heads may be restricted to Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270.*** The last submission made by counsel is that the Tribunal has not adjusted the amount of Rs.2,88,000/- awarded in favour of claimants as per award dated April 5, 2002.

Counsel for the cross objectors/claimants would contend that income of the deceased assessed by the Tribunal is on lower side and needs enhancement. The claimants may be allowed benefit of addition in income for future prospects @ 40% as the deceased was less than 40 years of age.

Counsel for the parties have made rival submissions with regard to income of the deceased. Perusal of jamabandi Ex. PA/12 for the year 1999-2000 would reveal that widow and children of the deceased are recorded to be co-sharers in total land measuring 36 kanals but in the said jamabandi, there is no reference in the remarks column, if the said land was inherited by them on death of Sanjeev Virinder Singh. Even it is presumed that Sanjeev Virinder Singh was the owner of land which has been inherited by his legal heirs, land of the share of Sanjeev Virinder Singh is less than one acre. The land left behind by the deceased would be available to his family. At best, the family has lost management skills of the deceased in respect of land co-owned by him. Taking a clue from notification issued by the State of Punjab fixing minimum wage at the relevant time coupled with land holding of deceased and his educational qualification, income of the deceased is assessed at Rs.2,700/- per month. I would hasten to add that claimants have also raised the plea that deceased was working as contractor with PWD (B&R), Patiala. They did not examine any witness of the concerned department and documents produced on record are marked documents. In this view of the matter, claimants are not entitle to compensation qua income of deceased from any such activity.

The application for compensation has been filed by the widow, three children and widowed mother of the deceased as minor children born out of wedlock of Himmat Kaur and Manbir Singh (since deceased) are also residing with Himmat Kaur. They cannot be denied compensation on account of death of Sanjiv Virinder Singh. In the given circumstances, deduction for personal expenses allowed by the Tribunal is correct and affirmed. The claimants shall be entitle to addition in income for future prospects at the rate of 40%. Multiplier applied by the Tribunal is in consonance of age of the deceased. As such, loss of dependency is

Rs.5,44,320/- [Rs.5,18,400/- *i.e.* 2,700 x 12 x 16 + Rs.2,07,360/- (40% addition in income) – Rs.1,81,440/-(1/4th deduction)]

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.6,14,320/-. Compensation allowed by the Tribunal is reduced to the extent of Rs.7,62,680/-. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal. The compensation allowed vide award dated April 05, 2002 shall be adjusted out of Rs.6,14,320/- found payable, if the claimants have already received the same.

For the foregoing reasons, the appeal as well as cross objections stand disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

18.09.2019
Mohan Bimbra

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