IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207 **Date of decision: 20.12.2019**

FAO No.5466 of 2017 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Khushalo and others ... Respondents

FAO No.5473 of 2017 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Anita Sachdeva and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the insurance company.
Mr. MK Bhatnagar, Advocate and
Mr. Pankaj Shukla, Advocate for the claimants.
Mr. JS Khattar, Advocate for
Mr. Deepak Sharma, Advocate for the owner.
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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.5466 and 5473 of 2017 as these have emerged out of the same award dated 17.05.2017 passed by the Motor Accidents Claims Tribunal, Ambala whereby compensation has been assessed on account of death of Netrapal and Rajesh Sachdeva in a motor vehicular accident that took place on 03.04.2016.

Counsel for the insurance company would inform that both the appeals have been filed to assail only quantum of compensation.

FAO No.5466 of 2017

The Tribunal awarded Rs.20,66,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,520/-
Addition in income for future prospects	30%
Multiplier	13
Deduction for personal expenses	$1/4^{th}$
Loss of dependency	Rs.16,41,120/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection to respondents No.6 to 8	Rs.3,00,000/- (Rs.1,00,000/- each)

The plea of claimants is that deceased was working as Supervisor with Aggarwal Firms at salary of Rs.16,000/- per month. The claimants neither examined a representative of the aforesaid concern nor produced any documentary evidence with regard to avocation and income of the deceased. However, the Tribunal assessed income of the deceased by taking into consideration Deputy Commissioner's rates, meant for payment of wages to employees out of contingency fund. Taking a clue from notification issued by the State of Haryana fixing minimum wage at the relevant time, income of the deceased is assessed at Rs.8000/- per month. Claimants shall be entitle to addition in income for future prospects @ 25%.

The application for compensation has been filed by the widow, two sons and five daughters of the deceased. The Tribunal has noticed that claimants No.3 to 5 are married daughters and cannot be allowed loss of dependency. Even if major son of the deceased is dependent upon his earning, claim qua loss of dependency is sustainable by five persons, therefore, the Tribunal has rightly allowed deduction for personal expenses to the extent of $1/4^{th}$. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.11,70,000/- [(8000 x 12 x 13) + (25% future prospects) – ($1/4^{th}$ deduction for personal expenses)].

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.70,000/- in the light of 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**, 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.12,40,000/- and compensation assessed by the Tribunal is reduced to the extent of Rs.8,26,000/- (20,66,000 - 12,40,000). The insurance company shall be entitle to recover the excess amount, if already paid/deposited, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No.5473 of 2017

The Tribunal awarded Rs.12,89,712/- (rounded off to

Rs.12,90,000/-), detailed hereunder:-

Monthly income of the deceased	Rs.10,520/-
Addition in income for future prospects	15%
Multiplier	11
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.10,64,712/-
Expenses on funeral	Rs.25,000/-
Loss of consortium	Rs.1,00,000/-
Loss of love and affection	Rs.1,00,000/-

The plea of claimants is that deceased was working as Security Guard with Black Cats Security, Ambala Cantt at salary of Rs.16,014/- per month. They failed to examine a representative of the aforesaid agency nor produced any documentary evidence with regard to employment and income of the deceased. In view of discussion made while disposing of FAO No.5466 of 2017, monthly income of the deceased is assessed at Rs.8000/-. Claimants shall be entitle to addition in income for future prospects @ 10%. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,74,400/- [(8000 x 12 x 11) + (10% 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.8,44,400/- and compensation assessed by the Tribunal is reduced to the extent of Rs.4,45,600/- (12,90,000 - 8,44,400). The insurance company shall be entitle to recover the excess amount, if already paid/deposited, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

20.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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