IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

251 **Date of decision: 07.11.2019**

FAO No.6170 of 2017 (O&M)

Smt. Pushpa Devi and another ... Appellants

Versus

Sandeep and others ... Respondents

FAO No.6603 of 2017 (O&M)

Iffco Tokio General Insurance Co. Ltd. ... Appellant

Versus

Pushpa Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Bhawna Grewal, Advocate for the claimants.
Mr. Yogesh Gupta, Advocate
for the insurance company (FAO No.6603 of 2017).
Mr. Ankur Gupta, Advocate
for the insurance company (FAO No.6170 of 2017).

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.6170 and 6603 of 2017 as these have emerged out of the same award dated 18.04.2017 passed by the Motor Accidents Claims Tribunal, Narnaul whereby compensation has been assessed on account of death of Atul in a motor vehicular accident that took place on 21.05.2015.

FAO No.6170 of 2017 has been filed by the claimants seeking enhancement of compensation whereas other appeal has been filed by Iffco Tokio General Insurance Co. Ltd. (hereinafter referred to as 'the insurance company').

Counsel for the insurance company would inform that appeal has been filed to assail only quantum of compensation.

The Tribunal awarded Rs.17,68,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,000/-
Addition in income for future prospects	15%
Multiplier	18
Deduction for personal expenses	$1/4^{th}$
Loss of dependency	Rs.17,28,000/-
Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.10,000/-
Loss of love and affection	Rs.30,000/-

Counsel representing the insurance company in appeal filed by the claimants and another counsel for the insurance company in FAO No.6603 of 2017 would argue that compensation allowed by the Tribunal is on higher side and merits reduction. It is argued that the Tribunal has wrongly assessed income of the deceased at Rs.10,000/- per month and deducted 1/4th towards personal expenses in place of making deduction of 50% as deceased was unmarried son of claimants Pushpa Devi and Rajesh Kumar. Compensation allowed under conventional heads may be modified 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.**

The plea of claimants is that Atul was doing tuition work and thereby earning Rs.20,000/- per month. The Tribunal has noticed that no document regarding educational qualification of the deceased has been produced. On 10.07.2019, counsel for the claimants was given an opportunity to seek instructions, if they are in possession of documents with regard to educational qualification of the deceased but no such material has been produced. In the given circumstances, plea of the claimants that deceased was doing tuition work does not get substantiated from materials on record. Taking a clue from notification issued by the State of Haryana fixing minimum wage, income of the deceased is assessed at Rs.6000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Multiplier applied by the Tribunal is correct and affirmed.

The application for compensation has been filed by the parents and two adult sisters of the deceased. There is nothing on record suggestive of the fact that Rajesh Kumar, father of the deceased had any disability to render siblings of the deceased dependent upon his income. The Tribunal has not assigned any reason to deviate from the formula laid down by Hon'ble the Supreme Court in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77** despite having taken note of the judgment in the award. In the given circumstances, admissible deduction for personal expenses would be 50%. In this manner, loss of dependency is calculated at Rs.9,07,200/- [(6000 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses)].

Under conventional heads, compensation awarded is modified to the effect that claimants shall be entitle to Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.9,37,200/- and compensation assessed by the Tribunal is reduced to the extent of Rs.8,30,800/- (17,68,000 - 9,37,200). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The Tribunal has awarded interest @ 7% per annum from the date of petition till realization with a stipulation that in case the compensation is not paid within 90 days from the date of award, interest @ 12% per annum with yearly rests would be payable. The penal provision with regard to payment of interest @ 12% per annum cannot be allowed to sustain in the light of judgment of Hon'ble the Supreme Court **National Insurance Co. Ltd. Vs. Keshav Bahadur and ors., 2004(2) RCR (Civil) 99.** That being so, compensation assessed by this Court shall carry interest @ 7.5% per annum from the date of petition till realization.

In view of what has been discussed hereinbefore, the appeals stand disposed of in the aforesaid terms.

07.11.2019 **(REKHA MITTAL)**

ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No