In the High Court of Punjab and Haryana at Chandigarh

FAO- 6198 of 2017(O&M)
Date of Decision:19.3.2019

Oriental Insurance Company Limited

---Appellant

vs.

Kulwinder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Harsh Aggarwal, Advocate
for the appellants

Mr. Anil Spehia, Advocate
for the respondents

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<u>Rekha Mittal, J.</u>

The present appeal directs challenge against award dated 24.4.2017 passed by the Motor Accidents Claims Tribunal, Jalandhar (in short “the Tribunal”) whereby compensation has been assessed on account of death of Kuldeep Singh in a motor vehicular accident that took place 9.11.2015.

Counsel for the insurance company would inform that the appeal has been preferred to challenge quantum of compensation and liability of the insurance company as driver of offending vehicle did not contain an endorsement authorizing to drive a vehicle carrying inflammable/hazardous goods.

The Tribunal has awarded Rs. 17,10,000/- (rounded of to Rs.

17.,00,000/-), detailed hereunder:-

Monthly income of the deceased	Rs. 15,000/-
Deduction for personal expenses	1/4th
Multiplier	11
Loss of dependency	Rs. 14,85,000/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection to children	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel for the appellant would urge that as the offending truck was carrying gas cylinders at the time of occurrence and licence possessed by driver did not contain endorsement in compliance with provisions of Section 14 of the Motor Vehicles Act, 1988, the insurance company is entitle to be exonerated of liability or in the alternative can press for right of recovery against the insured after payment of compensation to the claimants.

The contention raised by the insurance company, in this regard, is untenable when examined in the light of judgment of this Court **National Insurance Company Limited vs. Harbans Kaur and others** FAO- 1210 of 2014 along with connected case decided on 26.3.2018.

With regard to quantum of compensation, it is argued that the Tribunal has assessed income at Rs. 15,000/- per month without any cogent and convincing evidence adduced by the claimants with regard to avocation and income of the deceased. Compensation allowed under conventional heads needs to be restricted to Rs.70000/-, in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270** and **Sebastiani Lakra and**

others vs. National Insurance Company Limited and another AIR 2018 SC 5034. In addition, it is argued that the Tribunal has wrongly applied deduction to the extent of 1/4th as claim application has been filed by widow and two major daughters of the deceased.

Counsel representing the claimants has supported assessment of income by the Tribunal. It is argued that claimants are entitle to addition in income for future prospects to the extent of 25% as the deceased was less than 50 years of age. He would pray that multiplier adopted by the Tribunal needs modification on the basis of age of the deceased.

The Tribunal has assessed income of the deceased at Rs. 15000/- per month by relying upon salary certificate Ex. A4. The deceased was driving a school bus at the time of unfortunate occurrence, sufficient to establish that he was a driver of school bus. However, the claimants did not examine a witness from the school to prove his salary on the basis of documents, if any, maintained by the school. Taking a cumulative view of the materials on record coupled with notification issued by the State of Punjab with regard to minimum wage at the relevant time, income of the deceased is assessed at Rs. 9,000/- per month. Perusal of the driving licence and Aadhar Card, copies whereof were produced for perusal and appreciation, would reveal that the deceased was born in the year 1967 and as such he was less than 50 years of age at the time of death. The claimants shall be entitle to addition in income for future prospects @ 25%. Admissible multiplier in the given circumstances is 13.

The application for compensation has been filed by the widow and two major daughters of the deceased and one of them is married. The Tribunal has wrongly applied deduction of 1/4rd for personal and living expenses of the deceased as against admissible deduction of 1/3rd. In this manner, loss of dependency is calculated at Rs. 11,70,000/- [9000 x 12 x13 = 14,04,000 + 3,51,000(25%) = 17,55,000 – 5,85,000(1/3rd)].

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

Los of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 12,40,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs. 4,60,000/- (17,00,000-12,40,000). The insurance company shall be entitle to recover the excess amount, if any, already paid by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

19.3.2019
paramjit

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