IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.6312 of 2017 (O&M)
Date of Decision:27.02.2019

Magma HDI General Insurance Company Limited

...Appellant(s)

Versus

Smt.Sushila and others

...Respondent(s)

FAO No.8718 of 2017 (O&M)

Sushila and others

...Appellants

Versus

Pankaj and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sachin Ohri, Advocate for the appellant.
Mr.Ashwani Gaur, Advocate for respondents No.1 to 3.
Mr.Devender Kumar, Advocate for
Mr.Surinder Dagar, Advocate for respondents No.4 and 5.

ANIL KSHETARPAL, J.

By this judgment, FAO Nos.6312 and 8718 of 2017 shall stand disposed of, arising out of a common award passed by the learned Motor Accident Claims Tribunal (for short "the Tribunal"). One appeal is preferred by the Insurance Company, whereas another appeal is filed by the claimants for enhancement of compensation awarded by the learned Tribunal.

The Insurance Company as well as the claimants are contesting the award passed by the learned Tribunal on quantum.

Learned counsel appearing for the Insurance Company has submitted that the learned Tribunal has erred in assessing the income of the deceased as Rs.13,000/- per month because as per Exhibits P5 to P9, the basic salary of the deceased was Rs.5434/- and the remaining amount represents allowances including mobile/internet reimbursement and field reimbursement. He has further submitted that the learned Tribunal increased the income by adding 50% of the income on account of future prospects, although, as per the judgment passed by the Constitution Bench of the Hon'ble Supreme Court in **National Insurance Company Limited Vs Pranay Sethi and others, 2017 AIR (SC) 5157**, the claimants are entitled to 40% addition towards future aspects. He has also submitted that amount of Rs.2,25,000/- has been awarded on accounts of consortium, love and affection and funeral expenses, whereas only Rs.70,000/- is permissible in total.

On the other hand, the claimants, who have filed a connected appeal, pray for enhancement of the compensation. Learned counsel for the claimants has drawn attention of this Court to Ex.P10, terms and conditions of the appointment, which provides that the deceased was appointed on a fixed monthly salary of Rs.13,998/-. He has further pointed out that basically the company was paying Rs.13,000/- by making adjustments, as in Ex.P6, an amount of Rs.7274/- has been shown to be field reimbursement, whereas in Ex.P7, same amount has been mentioned towards mobile/internet reimbursement. In Ex.P8, again there is same amount towards field reimbursement. The deceased died on 12.11.2015. However, Ex.P9, i.e. the pay slip for the month of November 2015 reflects the calculation of salary for 12 days only. Hence, he submitted that the learned Tribunal has committed no in assessing the income of the deceased at Rs.13,000/- per month for the purpose of dependency.

This Court with the assistance of learned counsels have also seen the statement of Lala Ram, an official of the employer company. He has stated that income of the deceased was little more than Rs.12,000/-. He has admitted that the basic salary was Rs.5434/- per month. It may be noted that while cross-examining this witness, who has appeared as PW-2., counsel appearing for the Insurance Company has not drawn attention of the witness to the fact that in all the salary slips, mobile/income reimbursement and fuel reimbursement is same. Since this is the only record available with the Court, therefore, rule of thumb has to apply. It is not in dispute that the deceased was working as Assistant Field Development Officer in a private limited company.

Keeping in view the aforesaid facts and particularly taking into consideration Ex.P10 i.e. terms and conditions of appointment where monthly salary has been shown as Rs.13,998/-, Rs.13,000/-per month has been rightly assessed by the learned Tribunal after adjusting certain allowances. Since the employer company was making adjustment of the remaining amount either under the head Mobile/Internet reimbursement or Field reimbursement, hence, there is no error in the assessment of the income.

As regards increase in income on account of future prospects, there is not much difficulty as Constitution Bench in Pranay Sethi's supra has now concluded that in case a person who was appointed on a fixed wages in a private establishment dies before the age of 40 in motor vehicular accident, there will be addition of 40% of the income towards future prospects. The learned Tribunal had assessed 50% towards future aspects, however, kept the same in abeyance till the decision of the judgment of the Constitution Bench which has now been released. Thus, the claimants shall be entitled to 40% addition towards future prospects.

As regards compensation on account of conventional heads, the learned Tribunal awarded a sum of Rs.2,25,000/-, whereas Rs.70,000/- is permissible towards conventional heads (for loss of consortium Rs.40,000/-, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses), as per the judgment of Constitution Bench in Pranay Sethi's (supra). However, in a recent judgment passed by Hon'ble the Supreme Court in **Magma General Insurance Co.Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018 (4) RCR (Civil) 333,** it has been held that if the parents are claimants, then each parent shall be entitled to filial consortium @ Rs.40,000/-. There is no dispute about multiplier applied as well as expenses on medical treatment.

Taking into consideration the aforesaid facts, the award passed by the learned Tribunal stands modified. The income of the deceased is assessed at Rs.18,200/- per month by adding increase in income on account of future prospects [13000+(13000 x40%). 1/3rd is to be deducted towards personal expenses and thus yearly dependency comes to Rs.1,45,596/- [18200-(18200X1/3)x12]. After applying the multiplier of 15, the total dependency comes to Rs.21,83,940 (1,45,596x15). Further, the claimants shall be entitled to Rs.70,000/- in total under conventional heads (for loss of consortium Rs.40,000/-, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses) instead of Rs.2,25,000/- awarded by the learned Tribunal. The parent shall also be entitled to Rs.40,000/- towards filial consortium.

After addition of medical expenses to the tune of Rs.63,123/-, the total compensation payable to the claimants comes to Rs.23,57,063/- (2183940+70000+40000+63123), which is rounded off to Rs.23,57,000/-. The claimants shall be entitled to interest @7.5% per annum on Rs.5,08,940/- i.e. the enhanced amount from the date of filing of petition till realization.

With the above modification in the impugned award passed by the learned Tribunal, both the appeals stand disposed of. Pending application(s), if any, shall also stand disposed of, in terms thereof.

27.02.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No