IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6308 of 2019 (O&M)
Date of decision: 16.10.2019

National Insurance Co. Ltd. ... Appellant

Versus

Ramanpreet and ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Radhika Suri, Sr. Advocate with
Mr. Neeraj Khanna, Advocate for the appellant.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 20.05.2019 passed by the Motor Accidents Claims Tribunal, Tarn Taran whereby compensation has been assessed on account of death of Avtar Singh in a motor vehicular accident that took place on 24.01.2017.

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

The Tribunal awarded Rs.92,87,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.42,000/-
Addition in income for future prospects	50%
Multiplier	16
Deduction for personal expenses	$1/4^{th}$
Loss of dependency	Rs.90,72,000/-
Expenses on funeral	Rs.15,000/-
Loss of consortium	Rs.2,00,000/- (40,000 x 5)

The claimants shall be entitle to interest @ 6% per annum from the date of filing of claim petition till final realisation in case the insurance company fails to pay compensation within a period of three months.

Counsel for the appellant would argue that deceased was a Sepoy in Indian Army. Salary certificate Ex.C4 was produced wherein details of monthly salary making total amount of Rs.41,865/- has been given. It is argued that respondents/claimants are not entitle to benefit of transport allowance Rs.800/-, personal maintenance hygiene allowance Rs.180/-, leave ration allowance Rs.597/- and special compensation counter insurgency area Rs.4500/- and monthly loss of dependency may be modified accordingly. In addition, it is argued that the Tribunal has not made statutory deduction of income tax in view of annual income of the deceased. She would pray that compensation allowed under conventional heads may be modified in the light of decision by Constitution Bench of Hon'ble the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. In support of contention with regard to deduction of certain allowances, she has relied upon judgments of Hon'ble the Supreme Court **Raj Rani Vs. Oriental Insurance Co. Ltd., 2009(13) SCC 654** and **Shyamwati Sharma and ors. Vs. Karam Singh and ors., 2010(3) RCR (Civil) 741.**

I have heard counsel for the appellant, perused the paper book particularly the award and copies of documents supplied during course of hearing and judgments cited at bar.

The claimants examined Gurbinder Singh CW3 to prove employment and income of the deceased. He produced salary certificate Ex.C4. Perusal of salary certificate reveals that deceased was paid the allowances, highlighted by counsel for the insurance company. The transport allowance of Rs.800/- was paid to the deceased and there is nothing on record suggestive of the fact that said allowance was payable as reimbursement on the basis of actual expenses. I find it difficult to accept contention of counsel for the appellant that benefit of transport allowance and leave ration allowance was not available to family of the deceased or the same was personal in nature, therefore, liable to deduction out of total salary of the deceased. However, a sum of Rs.180/- paid for personal maintenance hygiene allowance is personal in nature and benefit thereof is not extendable to the claimants.

The deceased was paid Rs.4500/- per month as special compensation counter insurgency area as he was posted in the State of Jammu and Kashmir. Counsel for the appellant has failed to point out any materials on record on the basis whereof, it can be held that his posting in insurgency area was for a limited period or as per policy of the Department of Defence or instructions issued by Army authorities, the deceased would have been shifted from the said area after a particular point of time. In the given circumstances, I do not find merit in contention of the appellant that benefit of special compensation of Rs.4500/- cannot be extended for computing loss of dependency. After deducting Rs.180/- paid towards personal maintenance hygiene allowance, monthly salary of the deceased was Rs.41,685/- and annual salary was Rs.5,00,220/-. After deducting income tax (Rs.25,795/-), net annual income is Rs.4,74,425/-. The Tribunal has rightly extended benefit of addition in income for future prospects @ 50%, applied deduction of 1/4th for personal and living expenses of the deceased and multiplier of 16. In this manner, loss of dependency is calculated at Rs.85,39,650/- [(4,74,425 x 16) + (50% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, the Tribunal has awarded Rs.2,15,000/-. A sum of Rs.2 lakh has been awarded for spousal consortium and parental/filial consortium @ Rs.40,000/- each to claimants No.1 to 5. When the case is examined in the light of judgment in **Pranay Sethi and others's case (supra)**, respondents/claimants are entitle to Rs.70,000/- under conventional heads, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

The Tribunal relied upon judgment of Hon'ble the Supreme Court, **Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram and others, 2018(4) RCR (Civil) 333**, to extend benefit of parental/filial consortium to claimants No.1 to 5. However, later a three Judge Bench in **Sebastiani Lakra and others vs. National Insurance Company Limited and another AIR 2018 SC 5034** has granted Rs.70,000/- under conventional heads in view of judgment in **Pranay Sethi and others's case (supra)**. That being so, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereinbefore. In view of the above, total compensation is Rs.86,09,650/- and compensation assessed by the Tribunal is reduced to the extent of Rs.6,77,350/- (92,87,000 - 86,09,650).

The Tribunal has allowed interest @ 6% per annum only if the insurance company fails to pay the awarded amount within a period of three months. The Tribunal has not assigned any reason for extending this concession to the insurance company or denying interest to the claimants from the date of filing of claim application. As per the settled position in law, the Tribunal has an obligation to assess just and reasonable compensation. In exercise of powers under Order 41 Rule 33 of the Code of Civil Procedure, findings of the Tribunal with regard to interest are modified to the effect that compensation assessed by this Court shall carry interest @ 7.5% per annum from the date of filing of petition till realisation irrespective of whether the compensation is paid within the period prescribed by the Tribunal or otherwise.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

16.10.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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