IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202 FAO No.4605 of 2018 (O&M)

Date of decision: 11.12.2019

THE NEW INDIA ASSURANCE COMPANY LTD ... Appellant

Versus

MUNESH @ MUNESH KUMARI AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Manpreet S. Kanda, Advocate for the appellant.
None for respondents No.1 to 4.
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REKHA MITTAL, J. (Oral)

CM Nos.15499-500-CII of 2018

Heard.

Allowed as prayed for. Delay of 23 days in refiling and 10 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against award dated 05.02.2018 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby compensation has been assessed on account of death of Sunil Kumar in a motor vehicular accident that took place on 05.05.2015.

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

The Tribunal awarded Rs.19,74,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.10,000/-
Addition in income for future prospects	40%
Multiplier	17
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.19,04,000/-
Expenses on funeral	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.40,000/-

The sole submission made by counsel for the appellant is that income of the deceased assessed by the Tribunal is not based upon any materials on record and the same is much more than the minimum wage of unskilled labour available at the relevant time.

There is no representation on behalf of respondents No.1 to 4 earlier represented by a counsel.

The plea of claimants is that the deceased was a Graduate and engaged in dairy farming and agricultural pursuits thereby earning Rs.45,000/- per month. Perusal of the award would reveal that except bald statement of widow of the deceased, there is no oral or documentary evidence on record with regard to avocation and income of the deceased. The Tribunal has not assigned any reason for assessing monthly income at Rs.10,000/- per month. In absence of clear much less cogent and convincing evidence adduced by the claimants to prove avocation and income of the deceased and 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.6000/- per month. Other criteria adopted by the Tribunal for assessing loss of dependency is correct and affirmed. In this manner, loss of dependency is calculated at Rs.11,42,400/- [(6000 x 12 x 17) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed is correct and affirmed.

Total compensation is Rs.12,12,400/- and compensation assessed by the Tribunal is reduced to the extent of Rs.7,61,600/- (19,74,000 - 12,12,400). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The appeal is partly allowed in the aforesaid terms.

11.12.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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