IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

256 **Date of decision: 18.07.2019**

FAO-889-2018 (O&M)

IFFKO TOKIO GENERAL INSURANCE COMPANY LIMITED
... Appellant

Versus

NIDHI & OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashwani Talwar, Advocate for the insurance company.
Mr. Ashish Gupta, Advocate for the claimants.
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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 01.09.2017 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been assessed on account of death of Sandeep Kumar in a motor vehicular accident that took place on 07.09.2015.

The Tribunal awarded Rs.22,89,960/- (rounded off to Rs.22,90,000/-), detailed hereunder:-

Monthly income of the deceased	Rs.9560/-
Addition in income for future prospects	50%
Multiplier	18
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.20,64,960/-
Expenses on funeral	Rs.2,25,000/-
Loss of consortium and loss of love and affection	

Counsel for the insurance company would argue that income of the deceased has been assessed on the basis of Deputy Commissioner's rates, meant for payment to employees out of contingency fund whereas minimum wage of an unskilled labour at the relevant time was approximately Rs.7000/- per month. Compensation awarded by the Tribunal for future prospects and under conventional heads may be modified in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**.

Counsel for the claimants, on the contrary, has supported assessment made by the Tribunal.

The plea of claimants is that the deceased was agriculturist and doing work of dairy farming thereby earning Rs.30,000/- per month. The Tribunal has noticed that claimants have failed to adduce authentic evidence to prove avocation and income of the deceased. As has been rightly argued by counsel for the insurance company, DC rates are meant for payment to employees out of contingency fund. In absence of any tangible materials on record with regard to income of the deceased, the Court can derive some clue from the minimum wage of an unskilled worker available at the relevant time. Taking into consideration notification issued by State of Haryana fixing minimum wage coupled with educational qualification of the deceased, income of the deceased is assessed at Rs.7000/- per month. Claimants shall be entitle to addition in income for future prospects @ 40% in the light of judgment in **Pranay Sethi and others's case (supra)**. Multiplier and deduction for personal expenses applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.14,11,200/- [(7000 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses)].

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

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

Total compensation is Rs.14,81,200/- and compensation assessed by the Tribunal is reduced to the extent of Rs.8,08,800/- (22,90,000 - 14,81,200) . The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

18.07.2019 **(REKHA MITTAL)**
ashok **JUDGE**

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