IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO 3318 of 2016 (O&M)
Date of decision: 19.12.2019

National Insurance Company Limited ....*Appellant*

Versus

Rajinder Kaur and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mrs. Swatantar Kapoor, Advocate
for the appellant

Mr. Yogesh Saini,Advocate
for respondents No. 1 to 3 and 6 to 8

None for respondents No. 4 and 5

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Rekha Mittal, J. (Oral)

CM 12012 CII of 2016

Prayer in this application is for condoning delay of 75 days in filing the appeal.

Heard.

In view of averments made in the application supported by an affidavit and arguments advanced, the application is allowed and delay of 75 days in filing the appeal stands condoned.

Main case

Challenge in the present appeal has been directed against the award dated 26.11.2015 passed by the Motor Accidents Claims Tribunal, Ludhiana whereby compensation has been assessed on account of death of Major Singh in a motor vehicular accident that took place on 15.11.2011.

Counsel for the insurance company would inform that the appeal has been filed primarily to assail quantum of compensation and findings of the Tribunal on the question of driving licence.

The Tribunal awarded Rs.24,66,600/-, detailed hereunder:-

-Monthly income of the deceased	Rs.22,891/-
-Addition in income	15%
-Deduction for personal expenses	1/3rd
-Multiplier	11
-Loss of dependency	Rs.23,16,600/-
-Loss of consortium	Rs.1,00,000/-
-Loss of love, affection, funeral expenses	Rs.50,000/-

Counsel for the insurance company would argue that addition in income for future prospects should be 10%. Compensation allowed under conventional heads may be restricted to Rs.70,000.00.

With regard to driving licence, it is argued that the Tribunal has wrongly held that issue No. 3 pertaining to driving licence was not pressed by the insurance company. It is further argued that as per report marked as Ex.R5, no record in respect of licence in question (Ex.R11) was found available with the District Transport Officer, Nagaland.

Counsel representing claimants/respondents No. 1 to 3 and 6 to 8, on the contrary, has supported assessment of compensation by the Tribunal with the submissions that since the deceased was an employee of Punjab State Powercom Corporation, Division No. 2, Ludhiana, the Tribunal has rightly extended benefit of addition in income for future prospects at the rate of 15%.

Indisputably, the deceased was an employee of the aforesaid corporation and was drawing salary of Rs.23,091/- per month. The Tribunal has deducted Rs.200/- per month towards income tax. The gross annual salary comes to Rs.2,77,092/- (23,091 x 12). After deducting income tax i.e. Rs.10,000/-, net annual salary is Rs.2,67,092/-. Addition in income for future prospects, deduction for personal expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency comes to Rs.22,52,475/- (Rs.29,38,012/- *i.e.* 2,67,092 x 11 + Rs.4,40,702/- (15% addition) – Rs.11,26,238 (1/3rd deduction)).

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000.00 (Rs.40,000.00 for loss of consortium, Rs.15,000.00 each qua loss to estate and funeral expenses), in the light of judgments of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SCC 1270*** and ***Sebastiani Lakra and others vs. National Insurance Company Limited and another, 2018 AIR (SC) 5034.***

In view of the above, total compensation is Rs.23,22,475/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,44,125/- (24,66,600 – 23,22,475). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application.

This brings the Court to question of driving licence possessed by Jatinder Ghosh-respondent No. 4. The insurance company has sought to rely upon information received under the Right to Information Act, 2005 by one Gurjit Singh Kalyan, Advocate, District Court, Ludhiana. The insurance company did not examine Shri Gurjit Singh Kalyan, Advocate much less a witness of the concerned Licensing Authority along with relevant records to discharge onus that licence possessed by the driver is not valid, thus, the insured is guilty of violating the terms and conditions of the policy. In this view of the matter, the appellant cannot derive any advantage to its contention from document Ex. R5 to contend that findings of the Tribunal on the question of driving licence should be reversed.

Counsel for the appellant raised another issue that the Tribunal has wrongly awarded interest on the awarded amount @ 6% per annum from the expiry of 30 days from the date of accident, failing which, it would be of 9% per annum from the date of filing of petition till realization. It is argued that the claimants cannot be held entitle to interest prior to filing of claim application nor a penal clause with regard to payment of interest @ 9% per annum can be affirmed. In addition, it is argued that initially Bharti Axa General Insurance Company was impleaded as a party on the array of respondents and National Insurance Company Limited was impleaded after one and a half year of filing the claim application.

Counsel for the appellant is right in her submissions that interest on the awarded amount is payable with effect from date of filing of claim application. The penal clause with regard to payment of interest @ 9% per annum cannot be allowed to sustain. In this context, reference can be made to judgment of Hon'ble the Supreme Court ***National Insurance Co Limited vs. Keshav Bahadur, 2004 ACJ 648.***

Accordingly, findings of the Tribunal on the question of interest are modified to the effect that interest on the amount found payable by the Court shall be at the rate of 7.5% per annum from the date of filing claim application till realization.

In view of what has been discussed hereinbeore, the appeal stands disposed of with modification in the aforesaid terms.

(Rekha Mittal)
Judge

19.12.2019
Mohan Bimbra

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