IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3870 of 2014(O&M)

Date of decision: 27.8.2019

National insurance Co. Ltd. …..Appellant

VERSUS

Gopal Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.C. Gupta, Advocate for the appellant.

None for respondents No.1, 2 and 4.

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REKHA MITTAL, J.(Oral)

CM No.11819-CII of 2014

Heard.

Allowed as prayed for.

Delay of 2 days in filing the appeal is condoned.

Disposed of accordingly.

FAO No.3870 of 2014

The present appeal directs challenge against award dated 11.02.2014 passed by the Motor Accidents Claims Tribunal, Yamunanagar at Jagadhari (in short 'the Tribunal') whereby compensation has been assessed on account of death of Shubham Walia in a motor vehicular accident that took place on 31.12.2010.

The Tribunal awarded Rs.17,89,000/- detailed hereunder:-

Monthly income of the deceased	Rs.3,000/-
Addition in income for future prospects	50%

Deduction for personal expenses	1/3rd
Multiplier	18
Loss of dependency	Rs.6,48,000/-
Medical expenses	Rs.10,21,000/-
Transportation and last rites	Rs.20,000/-

Counsel for the appellant- insurance company would argue that since driver of offending vehicle i.e. car bearing No.HR-99-FKTP-1005 was under influence of alcohol beyond the prescribed limit, the insurance company is entitle to have right of recovery against the insured after payment of compensation to the claimants.

With regard to quantum of compensation, it is argued that the Tribunal has wrongly applied deduction of 1/3rd for personal and living expenses as against 50% allowed by Hon'ble the Supreme Court in **Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77**. Future prospects should be restricted to 40% in place of 50%. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**.

There is no representation on behalf of respondents No.1, 2 and 4, earlier represented by a counsel.

The application for compensation has been filed by unfortunate parents and two adult brothers of Shubham Walia. The plea of claimants is that deceased was a hardworking student of 4th semester in B.Tech Aeronautical Engineering at Dehradun. At the time of death, he was earning Rs.3500/- per month by working at Dehradun. The Tribunal noticed that claimants failed to adduce cogent and convincing evidence to prove employment and income of the deceased. Claimants have marked some documents as an evidence of deceased being a student of Alpine Institute of Aeronautics at Dehradun. The documents were tendered in the statement made by their counsel instead of in the testimony of both the parents of deceased examined as witnesses, may be to avoid cross examination qua the documents. Perusal of documents does not make it clear, if deceased was a student of B.Tech (4th semester). On the contrary, in Mark A-2 of Ist semester, the reporting is 'average in attendance/semester exam result'. In mark A-3 qua 2nd semester, he failed in the exam. It appears that in view of performance of deceased in the aforesaid institute, they (claimants) neither examined a witness of institute nor themselves produced documents in this regard. There is no evidence that despite failing in 2nd semester, the deceased continued his studies with the aforesaid institution. These facts falsify and belies statements of parents of the deceased that he was hardworking much less topper in his academics. When the case is examined in the light of notification issued by the State of Haryana fixing minimum wage at the relevant time and educational qualification of the deceased, his income is assessed at Rs.5500/- per month. Claimants shall be entitle to addition in income for future prospects at the rate of 40% in place of 50%. The application for compensation has been filed by the parents and two adult brothers of the deceased. When the case is examined in the light of observations made by Hon'ble the Supreme Court in **Smt. Sarla Verma's case** (supra), admissible deduction for personal expenses would be 50%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs.8,31,600/- [Rs.11,88,000/- (Rs.5500/- x 12 x 18) + Rs.4,75,200/- (40% towards future prospects) – Rs.8,31,600/-

(50% deduction towards personal expenses)]. Reimbursement of medical expenses allowed by the Tribunal is affirmed.

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitle to Rs.30,000/- detailed hereunder:-

Funeral expenses	Rs.15,000/-
Loss to estate	Rs.15,000/-

In view of the above, total compensation is Rs.18,82,600/- and additional amount is Rs.93,600/- (Rs.18,82,600/- - Rs.17,89,000/-), payable with interest at the rate of 7.5% per annum from the date of petition till realisation.

This brings the Court to issue of right of recovery to be extended in favour of the insurance company as driver was under influence of liquor beyond prescribed limit. No such defence plea is available to the insurer under Section 149(2) of the Motor Vehicles Act, 1988. As such, I do not find any reason to differ with findings of the Tribunal holding the insurance company jointly and severally liable to pay compensation.

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

The Registry is directed to send a copy of the order to the claimants in order to enable them to realize the additional amount.

AUGUST 27, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no