IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6835 of 2019(O&M)

Date of decision: 15.11.2019

National Insurance Co. Ltd. …..Appellant

VERSUS

Veerpal Kaur and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Lalit Garg, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 21.08.2019 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby compensation has been assessed on account of death of Sonu @ Sohan Singh in a motor vehicular accident that took place on 11.02.2018.

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

The Tribunal awarded Rs.16,62,000/- detailed hereunder:-

Annual income of the deceased	Rs.80,000/-
Deduction for personal expenses	1/4th
Multiplier	18
Addition in income for future prospects	40%
Loss of dependency	Rs.15,12,000/-
Loss of filial consortium to the parents	Rs.40,000/-
Loss of love and affection to daughter	Rs.40,000/-

Loss of consortium to the widow	Rs.40,000/-
Last rites expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

Counsel for the appellant would argue that claim has been filed by the widow, minor daughter and parents of deceased Sonu. Father of deceased is stated to be 54 years old. Veerpal Kaur, widow of the deceased stated in her cross examination that her father in law is working as a Contractor in Grain Market, therefore, Chiman Mashi, father of the deceased is not entitle to loss of dependency and accordingly deduction for personal expenses should be 1/3rd.

Another submission made by counsel is that compensation allowed under conventional heads may be modified in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** and **Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, AIR 2018 SC 5034.** In addition, it is argued that the Tribunal has allowed interest at the rate of 9% per annum but the same is more than bank rate of interest at the time of occurrence as well as passing of award.

The Tribunal, in one of the sub paras of para 17 of the award has allowed deduction to the extent of 1/4th qua personal and living expenses of the deceased but without adverting to testimony of Veerpal Kaur and facts elicited in her cross examination. Since father of the deceased is 54 years old and is gainfully employed, he cannot be held to be dependent upon income of his married son. In the given circumstances, deduction for personal expenses would be 1/3rd. Accordingly, loss of dependency is calculated at Rs.13,44,000/- [Rs.14,40,000/- (Rs.80000 x x 18) + Rs.5,76,000/- (40% addition towards future prospects) – Rs.6,72,000/- (1/3rd deduction towards 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:-

Loss of consortium to the widow	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation comes to Rs.14,14,000/- and compensation awarded by the Tribunal is reduced to the extent of Rs.2,48,000/- (Rs.16,62,000/- - Rs.14,14,000/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

Indisputably, insurance company did not adduce any evidence with regard to the prevalent bank rate of interest either at the time of occurrence or passing of award. Hon'ble the Supreme Court in **National Insurance Co. Ltd. Vs. Keshav Bahadur, 2004 ACJ 648,** has affirmed grant of interest at the rate of 9% per annum. Accordingly, findings of the Tribunal allowing interest at the rate of 9% per annum cannot be faulted with.

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

Before parting with this order, it is pertinent to mention that compensation assessed by the Tribunal has been reduced without notice to the claimants. They would be at liberty to file an appropriate application if they have any grievance to express. It is further clarified that in case the claimants file an appeal for enhancement, any observation made for disposing of appeal filed by the insurance company would not cause prejudice to their right.

NOVEMBER 15, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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