IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6960 of 2019(O&M)

Date of decision: 22.11.2019

New India Assurance Co. Ltd. …..Appellant

VERSUS

Anamika Munjal and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate for the appellant.

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REKHA MITTAL, J.(Oral)

Challenge in the present appeal has been directed against award dated 02.08.2019 passed by the Motor Accidents Claims Tribunal, Kurukshetra (in short 'the Tribunal') whereby compensation has been assessed on account of death of Rajesh Kumar Munjal in a motor vehicular accident that took place on 29.01.2018.

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

The Tribunal awarded Rs.40,88,266/- detailed hereunder:-

Monthly income of the deceased	Rs.24532/-
Addition in income for future prospects	30%
Deduction for personal expenses	1/4th
Multiplier	14
Loss of dependency	Rs.40,18,266/-
Loss of consortium to the widow	Rs.40,000/-

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

Counsel for the appellant has assailed quantum of compensation primarily on two counts. It is argued that Tribunal has assessed income of the deceased by taking average of four income tax returns for the years 2013-14, 2014-15, 2015-16 and 2016-17 proved by Pawan, Tax Assistant PW-3. It is argued that deceased died on 29.01.2018 but no income tax return for the financial year 2016-17 and assessment year 2017-18 has been produced, therefore, the Tribunal has wrongly relied upon the aforesaid returns for computing monthly loss of dependency. Another submission made by counsel is that Tribunal has allowed addition for future prospects at the rate of 30% but the same should be 25%, in view of the principles laid down by Hon'ble the Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270.**

I have heard counsel for the appellant, perused the paper-book and copies of statements of witnesses supplied during the course of hearing.

Anamika, widow of the deceased, appeared in the witness box and stated that her husband was running the business in the name and style of M/s D.S. Plastool thereby earning Rs.60,000/- per month. However, she did not produce any documentary evidence with regard to avocation and income of the deceased. The claimants examined Pawan, Tax Assistant, Income Tax Office, Ambala Cantt and he produced the aforesaid income tax returns marked as Ex.P1 to P4. Neither in the testimony of Anamika nor in the statement of Pawan, question was put to them with regard to income tax return for the assessment year 2017-18. The insurance company did not adduce any evidence that deceased stopped running the business of M/s D.S. Plastool during his lifetime. In the given circumstances, it is difficult to accept contention of the appellant that income shown in the income tax returns Ex.P1 to P4 has wrongly been made basis for computing monthly loss of dependency. The Tribunal, in place of assessing income on the basis of last income tax return has rather fixed the income by taking average of four returns on record. In this view of the matter, I do not find an error with regard to assessment of income of the deceased. However, addition in income for future prospects would be 25% as the deceased was not in permanent job but was self-employed. Other criteria adopted by the Tribunal for calculating loss of dependency is correct and affirmed. By extending benefit of addition in income for future prospects, loss of dependency comes to Rs.38,63,790/- [Rs.41,21,376/- (Rs.24532/- x 12 x 14) + Rs.10,30,344/- (25% addition towards future prospects) – Rs.12,87,930/- (1/4th deduction towards personal expenses)].

Compensation allowed by the Tribunal under conventional heads is in consonance with judgment of Hon'ble the Supreme Court **Pranay Sethi and others case (supra)**.

In view of the above, total compensation comes to Rs.39,33,790/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,54,476/- (Rs.40,88,266/- - Rs.39,33,790/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an application before the Tribunal.

The Tribunal has allowed interest at the rate of 9% per annum. Taking into consideration the bank rate of interest at the relevant time, interest chargeable would be at the rate of 7.5% per annum from the date of petition till realization.

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 22, 2019 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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