In the High Court of Punjab and Haryana at Chandigarh

FAO No. 4299 of 2019 (O&M)
Date of Decision: 9.1.2020

New India Assurance Company Limited

---Appellant

versus

Surinder Kaur (now deceased) through Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

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Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 14.2.2019 passed by the Motor Accidents Claims Tribunal, Bathinda (in short “the Tribunal”), whereby compensation has been assessed on account of death of Harbans Singh in a motor vehicular accident that took place on 28.1.2016.

Counsel for the appellant would inform that appeal has been filed to assail findings of the Tribunal on issue No. 1 and quantum of compensation.

With regard to findings on issue No. 1, the sole submission made by counsel is that Balwinder Singh, one of the claimants was examined to prove that accident is the result of rash and negligent driving of offending truck bearing registration No. HR-47-4858. Balwinder Singh is the author of FIR No. 16 dated 28.1.2016 lodged at police station, Civil Lines, Bathinda (Ex. A-2). In criminal proceedings, Balwinder Singh failed to support cause of prosecution resulting in acquittal of Jaimal Singh, driver of offending vehicle.

The Tribunal has awarded compensation of Rs. 49,00,057/- (rounded of to Rs. 49,00,000/-), detailed hereunder:-

Annual income of the deceased	Rs. 6,51,096/-
Net annual income	Rs. 6,22,229/-
Addition in income for future prospects	15%
Deduction for personal expenses	1/4th
Multiplier	9
Loss of dependency	Rs. 48,30,057/-
Loss of estate	Rs. 15,000/-
Loss of consortium	Rs. 40,000/-
Funeral expenses	Rs. 15,000/-

It is argued that as per salary record of the deceased, he was paid Rs. 1800/- per month towards transportation allowance and the same is liable to be ignored for computing loss of dependency. The application for compensation is filed by the widow, three major sons and married daughter of the deceased but the Tribunal has wrongly applied deduction of 1/4th for personal and living expenses. The deceased was 58 years old and he was due for retirement shortly, therefore, split multiplier may be applied for computing loss of dependency. In support of his contention, he has placed reliance upon judgment of this Court **Oriental Insurance Company Limited vs. Subhash Chander Palta and others 2017(3) RCR (Civil) 97,** Calcutta High Court **New India Assurance Company Limited vs. Sitarani Jana and others 2016 ACJ 1561, Geeta Mondal and others vs. Jagga Singh and another 2016 ACJ 1785,** Karnataka High Court **Alice Varkey vs. United India Insurance Company Limited and others 2012 ACJ 668** and that of Kerala High Court **Kumaran and others vs. Roy Mathew and others 2017 ACJ 1323.**

The first contention raised by counsel to assail findings of the Tribunal on issue No. 1 is not meritorious and liable to be rejected. Counsel has failed to point out if Balwinder Singh had denied the accident to be result of rash and negligent driving of offending vehicle i.e. truck No. HR-47-4858 in his statement recorded in criminal proceedings. The mere fact that driver of offending vehicle was acquitted in criminal case *ipso facto* is not a ground to intervene in findings of the Tribunal on issue No. 1, recorded on the basis of unrebutted testimonies of Balwinder Singh CW1 and another eye witness Ramesh Kumar CW2.

This brings the court to assessment made by the Tribunal. The transport allowance of Rs. 1800/- per month paid to deceased cannot be said to be personal in nature or its benefit being not available to family of the deceased and as such, the same can not be deducted out of total emoluments of deceased. In this context, reference is made to judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Indira Srivastava and others 2008(1) RCR (Civil) 359 and Manasvi Jain vs. Delhi Transport Corporation 2014(3) RCR (Civil) 313.**

The application for compensation was filed by the widow, three adult sons and a married daughter of the deceased. The married daughter would not be entitle to loss of dependency. Even if adult sons of the deceased had their own source of income, they cannot be denied substantial amount qua loss of estate. Had widow alone be the claimant, deduction for personal expenses would have been 1/3rd. In this regard, reference is made to judgment of this court **Balvir Kaur and others vs. Surender @ Surinder Singh and others, FAO No. 8419 of 2015, decided on 27.3.2019**. In view of entitlement of widow to loss of dependency and that of sons and daughter to loss of estate, deduction allowed by the Tribunal cannot be faulted with.

The contention with regard to applying split multiplier is not tenable, in view of judgment of this Court **Jasmel Kaur and another vs.Sukhraj Singh and others, FAO No. 4858-2012 decided on 07.02.2018**, wherein this court, on a detailed consideration and by taking into consideration various judgments of Hon'ble the Supreme Court has rejected plea of split multiplier.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

9.1.2020
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No