IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-24-CII of 2018 (O&M) in/and
FAO No.4715 of 2014 (O&M)
Date of decision: 31.01.2020

National Insurance Co. Ltd. ... Appellant

Versus

Janki Devi and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ravinder Arora, Advocate and
Mr. Neeraj Khanna, Advocate for the appellant.

Mr. Kamal Chaudhary, Advocate
for respondents No.1 to 3/cross objectors.

****

REKHA MITTAL, J. (Oral)

CM No.2054-CII of 2018 in XOBJC-24-CII of 2018

Heard.

Allowed as prayed for. Delay of 38 days in filing the cross objections stands condoned.

Main Case

This order will dispose of FAO No.4715 of 2014 and cross objections No.24-CII of 2018 as these have emerged out of the same award dated 28.03.2014 passed by the Motor Accidents Claims Tribunal, Sirsa whereby compensation has been assessed on account of death of Bihari Dass in a motor vehicular accident that took place on 10.10.2011.

The Tribunal in application filed under Section 163-A of the

ASHOK KUMAR
2020.02.07 11:24
I attest to the authenticity and
accuracy of this document

Motor Vehicles Act, 1988 (in short 'the Act') has awarded compensation of Rs.4,36,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.3000/-
Multiplier	14
Deduction for personal expenses	1/3rd
Loss of dependency	Rs.3,36,000/-
Expenses on funeral	Rs.25,000/-
Loss of love and affection	Rs.75,000/- (Rs.25,000/- each of the claimants.)

FAO No.4715 of 2014 has been filed by National Insurance Co Ltd. (hereinafter referred to as 'the insurance company') whereas cross objections have been filed by claimants seeking additional compensation.

Counsel for the insurance company would argue that as per plea of claimants, deceased was working as agricultural labourer under one Jagwinder Singh thereby earning Rs.7500/- per month. Janki Devi, one of the claimants appeared in the witness box and reiterated this plea of the claimants. They also examined Jagwinder Singh PW3 to substantiate their plea in this regard. It is argued that since in the claim application as well as testimony of witnesses it has been claimed that deceased was earning Rs.7500/- per month making annual income to the tune of Rs.90,000/-, claim application by invoking Section 163-A of the Act is not maintainable. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Deepal Girishbhai Soni and ors. Vs. United India Insurance Co. Ltd., Baroda, 2004(2) RCR (Civil) 466**.

Another submission made by counsel is that in case claim application is allowed to sustain, compensation allowed under conventional

ASHOK KUMAR
2020.02.07 11:24
I attest to the authenticity and
accuracy of this document

heads may be restricted to Rs.9500/-, in view of provisions contained in Second Schedule appended to Section 163-A of the Act.

Counsel representing the claimants/cross objectors, on the contrary, would state that even if the claimants have pleaded and asserted that the deceased was earning Rs.7500/- per month, the Tribunal has rightly assessed income of the deceased at Rs.3000/- per month which is less than Rs.40,000/- per annum. He has also supported assessment of compensation by the Tribunal.

I have heard counsel for the parties, perused the paper book particularly the award.

The issue with regard to maintainability of an application under Section 163-A of the Act in a case where the claimants had alleged income of the deceased @ higher than Rs.40,000/- per annum came up for consideration before Division Bench of this Court in **Oriental Insurance Co. Ltd. Vs. Smt. Saroj and ors., 2007(1) RCR (Civil) 152**. The Court after taking into consideration judgment of Hon'ble the Supreme Court **Deepal Girishbhai Soni and others's case (supra)** has held in para 5 that judgment does not lay down a law that merely by setting up a claim on the basis of higher income, the claimants would be disqualified to lay a claim under Section 163-A of the Act. Moreover, it appears from the ratio of that judgment that the provisions of Section 163-A of the Act being beneficial piece of legislation in nature would not act as a bar in case where the Tribunal comes to the finding that the income is below Rs.40,000/- yearly.

ASHOK KUMAR
2020.02.07 11:24
I attest to the authenticity and
accuracy of this document

There is no cogent evidence available on record that deceased had income more than Rs.40,000/- per annum. The Tribunal has assessed income at Rs.3000/- per month. Taking into consideration the ratio in **Smt. Saroj and others's case (supra),** contention raised by the insurance company that claim application is not maintainable is untenable.

This brings the Court to assessment of compensation by the Tribunal. The Tribunal has assessed loss of dependency strictly in consonance with the provisions incorporated in Second Schedule. However, the Tribunal has awarded Rs.1 lakh under conventional heads. Taking into consideration the Second Schedule, compensation allowed under conventional heads is modified to the effect that claimants shall be entitle to Rs.9500/-, detailed hereunder:-

1. Loss of consortium	Rs.5000/-
2. Loss of estate	Rs.2500/-
3. Funeral expenses	Rs.2000/-

As such, compensation assessed by the Tribunal is reduced to the extent of Rs.90,500/-. The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms. However, the cross objections are dismissed leaving the parties to bear their own costs.

31.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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

ASHOK KUMAR
2020.02.07 11:24
I attest to the authenticity and
accuracy of this document