IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.01.2020

FAO No.4074 of 2016 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Hawa Singh and others ... Respondents

FAO No.7483 of 2016 (O&M)

Hawa Singh and another ... Appellants

Versus

Rajbir and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. RC Kapoor, Advocate for insurance company.

Mr. Parmender Bhukal, Advocate for
Mr. Shalender Mohan, Advocate
for claimants/parents of deceased Naresh Kumar.

None for claimants/widow & minor child
of deceased Naresh Kumar

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4074 and 7483 of 2016 as these have emerged out of the same award dated 02.03.2016 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been assessed on account of death of Naresh Kumar in a motor vehicular accident that took place on 08.06.2010.

FAO No.4074 of 2016 has been filed by National Insurance Co. Ltd. (hereinafter referred to as 'the insurance company') whereas the other appeal has been filed by the claimants seeking additional compensation.

The Tribunal awarded Rs.19,09,712/-, detailed hereunder:-

Monthly income of the deceased	Rs.12,498/-
Multiplier	18
Deduction for personal expenses	$1/3^{rd}$
Loss of dependency	Rs.17,99,712/-
Expenses on funeral	Rs.10,000/-
Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company would argue that even if income of the deceased is assessed at Rs.13,749/- and addition in income for future prospects is allowed to the extent of 50% and thereafter loss of dependency is computed by applying multiplier of 18 and deduction of $1/3^{rd}$ but financial assistance available to widow of the deceased under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006') is deducted, the net result would be that claimants shall not be entitle to any loss of dependency.

There is no representation on behalf of the claimants (widow and minor) earlier represented by a counsel.

Perusal of the award would reveal that two claim applications, one by parents and other by widow and minor child of deceased Naresh Kumar, were decided vide common award dated 02.03.2016.

The claimants examined HC Umesh Kumar PW6 to prove that deceased was working as Constable in Haryana Police at salary of Rs.13,749/-. The witness produced salary certificate Ex.P4 wherein home take salary is Rs.13,629/-. The Tribunal has taken into consideration net salary of the deceased but without recording any reason as to why gross salary of the deceased is not to be taken into consideration. In the given circumstances, gross salary of the deceased shall be taken into account for computing loss of dependency. Claimants shall be entitle to addition in income for future prospects @ 50%. Multiplier applied by the Tribunal is correct and affirmed.

The Tribunal applied deduction for personal expenses to the extent of 1/3rd. There is nothing on record suggestive of the fact that father of the deceased had any source of income or was not dependent upon the deceased. He tendered into evidence his affidavit Ex.PW1/A wherein it has been testified that petitioners have no other source of income. In cross examination, there is no challenge to testimony of Hawa Singh to negate his plea that he has no source of income. In the given circumstances, all the claimants shall be entitle to loss of dependency, as such, admissible deduction for personal expenses would be 1/4th. In this manner, loss of dependency is calculated at Rs.33,41,007/- [(13,749 x 12 x 18) + (50% future prospects) – (1/4th deduction for personal expenses)].

Under conventional heads, compensation allowed is modified to the effect that claimants shall be entitle to Rs.70,000/-, detailed hereunder:-

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

Total compensation is Rs.34,11,007/-.

The family of deceased shall be entitle to financial assistance under the Rules of 2006 for a period of 15 years as the deceased was 24 years old at the time occurrence. HC Umesh Kumar PW6 had stated that widow of the deceased shall be entitle to financial assistance upto the date of retirement of the deceased. Smt. Meena, widow of the deceased in her testimony had stated that she is getting Rs.17,994/- as financial assistance from the department but again stated that she received Rs.1,08,000/- three months after death of Naresh Kumar. There is no clear evidence on record, if the widow is paid @ Rs.17,994/- per month towards financial assistance. Even if the amount of financial assistance is calculated @ Rs.13,749/- (gross salary of the deceased at the time of death), the same comes to Rs.24,74,820/- (13,749 x 12 x 15).

In view of the above, claimants shall be entitle to Rs.9,36,187/- (34,11,007 - 24,74,820). Compensation assessed by the Tribunal is reduced to the extent of Rs.9,73,525/- (19,09,712 – 9,36,187). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

Disposed of accordingly.

As the appeal (FAO No.7483 of 2016) has been decided on merits, application for condonation of delay is of academic relevance.

28.01.2020 **(REKHA MITTAL)**
ashok **JUDGE**

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