IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213 FAO-749-2021 (O&M)
FAO-662-2021 (O&M)
Date of decision: 02.12.2021

THE NEW INDIA ASSURANCE COMPANY LTD
..Appellant

Versus

FATEH SINGH AND ORS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satpal Dhamija, Advocate for the Insurance Co.
Mr. Neeraj Madan, Advocate the claimants.
***

ANIL KSHETARPAL, J (Oral)

By this order, two connected appeals arising from a common award passed by the Motor Accidents Claims Tribunal, Fazilka, shall stand disposed of.

Learned counsel representing the respective parties are ad idem that both the appeals can be conveniently disposed of by a common judgment.

The insurance company assails the correctness of the assessment made by the Tribunal on account of death of late Sh. Gurpreet Singh and Smt. Simarpal Kaur (husband and wife) in an automobile accident. The claim petition has been filed by their minor children aged about 10 years and 7 years respectively, apart from their grandmother, in one of the claim petition.

Learned counsel representing the insurance company does not dispute the correctness of the finding with regard to involvement of the vehicle in the accident and the rash and negligent driving of bus having registration No.RJ-13-PB-0400.

Learned counsel representing the appellant contends that the Tribunal has erred in relying upon the income tax returns which were filed subsequent to the date of death. Hence, he submits that in absence of evidence of income, the Tribunal has wrongly assessed the income of the deceased.

As per the case of the claimants, late Sh. Gurpreet Singh was driving a car having a registration No.PB-15-D-2642 while travelling along with Kulwant Kaur, Kamaljit Kaur, Lovepreet Kaur, Jaspal Kaur, Simarpal Kaur and Sarabjit Kaur. Their vehicle met with an accident with the bus driven by Om Parkash, having a registration No.RJ-13-PB-0400. In the aforesaid accident, on 26.02.2017 Sh. Gurpreet Singh and Smt. Simarpal Kaur lost their precious lives. The claim petition was filed with the assertion that late Sh. Gurpreet Singh was doing the business of honey bee farming in the name and style of M/s Fateh Bee Agro Farming apart from maintaining an orchard of kinnow in a 3 acre land. In order to prove the case, Jaspal Kaur (grandmother of the other two claimants) widow of Tara Singh, appeared in evidence and stated that the deceased was earning Rs.6 lakh per annum. It was claimed that late Sh. Gurpreet Singh used to earn Rs.3 lakh from honey bee farming, whereas earning Rs. 3 lakh from orchard of kinnow.

On a careful reading of cross examination of Smt. Jaspal Kaur, it is evident that correctness her statement in the examination in chief with regard to income of Sh. Gurpreet Singh was not challenged.

Furthermore, it has come on the record that the persons, who were doing business with late Sh. Gurpreet Singh, had during the year 2015-16, after deducting the amount of deposited tax deducted at source has deposited the same with the Income Tax Department. The TDS certificate has been produced which prove that Rs.9,94,536/- were paid to late Sh. Gurpreet Singh and amount of Rs.24,864/- deducted, as TDS was deposited in the Income Tax Department. Moreover, late Sh. Gurpreet Singh had a valid driving licence. He also had a pan card (Permanent Account Number). It has also been proved that Gurpreet Singh was a member of Punjab Bee Keeper Association. He had also successfully completed three months of a training course in practical education in agriculture. He had also done a course from Punjab Agriculture University, Ludhiana, for bee keeping (Apiculture). He has also got a permanent registration under the Value Added Tax (VAT).

Undoubtedly, income tax returns were filed after the death of Sh. Gurpreet Singh. However, the income shown in the tax deducted at source, has also been reflected in the income tax returns. The Tribunal has assessed income of the deceased, on the basis of income tax return which was filed with respect to assessment year 2017-18. However, the TDS certificate is reflected in the assessment year 2016-17 which shows the gross total income of the deceased at Rs.2,58,533/-.

Keeping in view the facts of the case, the income tax return for the year 2016-17 is more credit-worthy and therefore, is relied upon. This Court has increased the income on account of bright future prospects by 40% keeping in view the age of the deceased. The correctness of the same is not disputed. However, learned counsel representing the appellant contends that the deceased had left behind 3 dependents and therefore, deduction on account of own expenses of the deceased should be 1/3rd and not 1/4th. In the considered view of this Court, in the facts and circumstances of the present case, when two minor children along with their aged widowed grandmother, have been left to face the world, it would not be appropriate to make a deduction of 1/3rd on account of own expenses of the deceased.

There is no challenge to the assessment made by the Tribunal under remaining heads. Hence, the award passed by the Tribunal is modified to the extent, as under:-

1	Age of deceased	35 years 2 months
2	Occupation and income	Self Employed Rs.2,58,533/ per annum as per ITR assessment year 2016-2017. After adding 40% to it, income for the purpose of computation comes Rs.3,61,946/-
3	Multiplier	15

4	The amount after 1/4th deduction qua personal expenses	Rs.2,71,460/-
5	Loss of dependency	Rs.2,71,460 x 15= Rs.40,71,900/-
6	Loss of love and affection	Rs.15,000/-
7	Funeral expenses	Rs.15,000/-
8	Loss of parental and filial consortium @ Rs.40,000/ to each claimant	Rs.1,20,000/-
	Total:	Rs.42,21,900/-

In FAO No.662 of 2021, learned counsel representing the appellant contends that the Tribunal has erred in omitting to make a deduction, for own expenses. This appeal arises from the claim petition filed by Fateh Deep (aged about 10 years) and Naman Kumar (aged about 7 years). Their mother (Smt. Simarpal Kaur) had died in the same fatal accident. In absence of any evidence, the Court assessed the income of the deceased @ Rs.9000/- per month, as a homemaker. The contribution of a homemaker cannot be assessed in terms of money however, for the purposes of granting a compensation, some assessment is required to be made in order to reach a determination. Since Smt. Simarpal Kaur was not as such earning any amount therefore, it will not be appropriate to make any deduction on account of self expenses.

Learned counsel representing the insurance company relies upon **Kirti and etc. vs. Oriental Insurance Co. Ltd., Civil Appeal No.19-20 of**

2021, decided on 05.01.2021 to contend that from the notional income the deduction is required to be made for own expenses. This Court has carefully read the judgment. Two separate concurring opinions have been written by the Hon'ble Judges. With highest respect, this question was neither debated nor deliberated in the aforesaid judgment. In the considered opinion of this Court, once the income is being assessed on notional basis in order to assess the contribution of the homemaker, it would not be appropriate to make any deduction on account of own expenses in absence of cash in hand/actual income.

Consequently, FAO No.749 of 2021 is allowed, whereas FAO No.662 of 2021 is dismissed.

All the pending miscellaneous application(s), if any, are also disposed of.

02.12.2021 **(ANIL KSHETARPAL)**
ashok **JUDGE**

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