IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(Proceedings conducted through video conferencing)

FAO No.894 of 2017(O&M)

Date of decision: 5.1.2021

National Insurance Co. Ltd. …..Appellant

VERSUS

Kamini Devi and others .....Respondents

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CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Deepak Suri, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for the applicant-respondents No.1 to 5.

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REKHA MITTAL, J.

CM No.8696-CII of 2020 &
CM No.9643-CII of 2020

Counsel for the parties are ad idem that the main appeal may be taken on board today itself and disposed of on merits.

In view of the above, applications stand disposed of. FAO No.894 of 2017 is taken on board today itself.

FAO No.894 of 2017

Challenge in the present appeal has been directed against award dated 07.10.2016 passed by the Motor Accidents Claims Tribunal, S.A.S. Nagar (Mohali) (in short 'the Tribunal') whereby compensation has been assessed on account of death of Havaldar Sunil Kumar in a motor vehicular accident that took place on 04.06.2015.

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

The Tribunal has awarded Rs.83,21,565/- detailed hereunder:-

Annual income of the deceased	Rs.4,79,796/-
Addition in income for future prospects	50%
Deduction for personal expenses	1/4th
Multiplier	15
Loss of dependency	Rs.80,96,565/-
Loss of consortium	Rs.1,00,000/-
Loss of care and guidance for minor children	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-

The sole submission made by counsel for the appellant is that the Tribunal has not made deduction qua liability of the deceased to pay income tax.

Counsel representing the respondents/claimants has supported assessment of compensation with the submissions that deceased left behind widow aged about 37 years, two minor children aged 7 and 5 years and old-aged parents held entitle to loss of dependency as well as compensation under conventional heads.

I have heard counsel for the parties and perused the paper-book.

The Tribunal has assessed monthly income of the deceased at Rs.39,983/- and annual income is Rs.4,79,796/-. After deducting income tax to the tune of Rs.22,980/-, net annual income of the deceased is

Rs.4,56,816/-. Addition in income for future prospects, deduction for personal and living expenses and multiplier applied by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.77,08,770/- [Rs.68,52,240/- (Rs.4,56,816/- x 15) + Rs.34,26,120/- (50% addition for future prospects) – Rs.25,69,590/- (1/4th deduction towards personal expenses)].

The Tribunal has awarded a sum of Rs.2,25,000/- under conventional heads. The Tribunal has awarded Rs.1,00,000/- for loss of consortium, another Rs.1,00,000/- for loss of care and guidance for minor children and Rs.25,000/- for funeral expenses.

Claimants shall be entitle to loss of consortium at the rate of Rs.40,000/- each. As such, amount of Rs.2,00,000/- awarded under the aforesaid two heads shall be appropriated towards loss of consortium to each of the claimants at the rate of Rs.40,000/- each. In this context, reference can be made to judgment of Hon'ble the Supreme Court **The New India Assurance Co. Ltd. Vs Smt. Somwati and others and other connected cases, Civil Appeal No.3093 of 2020 (Arising out of SLP(C) No.23478 of 2019, decided on 07.09.2020.** The Tribunal has awarded Rs.25,000/- for funeral expenses. In view of judgment of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270**, claimants shall be entitle to funeral expenses to the tune of Rs.15,000/-. The Tribunal has not awarded any compensation for loss of estate. Claimants shall be entitle to Rs.15,000/- for loss of estate in the light of judgment in **Pranay Sethi and others case** (supra).

In view of the above, total compensation is Rs.79,38,770/- and compensation allowed by the Tribunal is reduced to the extent of Rs.3,82,795/- (Rs.83,21,565/- - Rs.79,38,770/-). The insurance company shall be entitle to recover the excess amount, if already paid, by filing an appropriate application before the Tribunal.

The Tribunal while deciding issue No.5 has bestowed recovery right in favour of the insurance company and against the driver and owner of offending vehicle (respondents No.1 and 2 therein). The recovery right given against driver of the vehicle cannot be allowed to sustain for want of privity of contract between the insurance company and driver of offending vehicle. As such, findings of the Tribunal on issue No.5 giving recovery right against the driver as well are set aside. The insurance company shall be entitle to have recovery right only against owner of the vehicle – respondent No.2 therein.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms.

JANUARY 5, 2021 **(REKHA MITTAL)**
'D. Gulati' **JUDGE**

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