IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

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FAO No.4569 of 2022 (O&M)

Date of Decision:05.12.2022

National Insurance Co. Ltd. .....Appellant

Vs.

Raman Lal and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Pardeep Goyal, Advocate for the appellant.

Mr. Ashish Gupta, Advocate for respondents No.1 to 4.

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DEEPAK GUPTA, J.

Insurance Company is in this appeal against grant of compensation of ₹21,40,000/- by Motor Accident Claims Tribunal, Nuh (for short, `the Tribunal') in MACP No.222 of 2019 (CNR No.HRNU01-003385-2019) titled "Raman Lal and others Vs. Akram and others.

2. Motor Vehicular accident was caused on 21.01.2019 by rash and negligent driving of motor-cycle No.HR-28H-8462 resulting into the death of Geeta who was a pillion rider on another motor-cycle No.HR-29L-4042 being driven by her son Deepak. FIR No.15 dated 25.01.2019 under Sections 279, 304-A IPC was registered at Police Station Gopalgarh, District Bharatpur against respondent – Akram, driver of the offending vehicle.

3. Claim petition was filed by husband and three major children of the deceased claiming compensation of ₹70 lacs. Respondents repudiated the claim. The Tribunal after taking evidence held respondent- Akram

(respondent No.5 in this appeal) to be responsible for causing the death due to his rash and negligent driving. Notional income of the deceased was taken to be ₹10,000/-. Considering the age of the deceased to be 48 years, multiplier of 13 was applied. 25% was added towards future prospects. However, no deduction was made towards self expenses. After adding compensation for loss of consortium to the claimants and for funeral expenses and loss of estate, total compensation of ₹21,40,000/- was allowed to be payable by the Insurance Company.

4. Contention of learned counsel for the appellant- Insurance Company is that income of the deceased has been wrongly taken at ₹10,000/- per month instead of minimum wages of ₹8827/-. It is further contended that one third deduction should have been made towards the self expenses.

5. After hearing counsel for the parties, I find merit in the contention of counsel for the appellant to the extent that deduction should have been made towards self expenses of the deceased in view of the law laid down by Hon'ble Supreme Court in **<u>Smt. Sarla Verma and others Vs. Delhi Transport Corporation and Another, 2009(3) RCR (Civil) 77</u>**, which has been affirmed by a Constitution Bench of the Hon'ble Supreme Court in **<u>National Insurance Company Limited Vs. Pranay Sethi and others, reported in MANU/SC/1366/2017</u>**.

6. As far as notional income of the deceased is concerned, it has been rightly assessed to be ₹10,000/- as deceased was a home maker and her contribution to house cannot be ignored. A home maker who takes care of the entire house including husband and children, cannot be equated with a simple labourer so as to assess her income only on the basis of minimum wages. As such, it is held that notional income of the deceased has been rightly taken to be ₹10,000/- per month. There is no dispute that she was 48 years of age at the time of her death and so, multiplier of 13 has been rightly applied. 25% income has been rightly added towards future prospects and this way, annual income of the deceased works out to (₹10,000/- x 12) x 125% = ₹1,50,000/-.

7. Contention of counsel for the appellant that claimants No.2 to 4 being major sons are not entitled to compensation has no merit as it has been held by Hon'ble Supreme Court in **National Insurance Company Limited Vs. Birender and others, 2020 AIR (SC) 434**, that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and that Tribunal is obliged to consider their application irrespective of the fact that as to whether the concerned legal representatives were fully dependant upon the deceased.

8. Since there are four claimants, therefore, 1/4th deduction is liable to be made from the income of the deceased. After making the said deduction, the

dependancy works out to ₹1,12,500/- and so, compensation works out to ₹1,12,500/- x 13 = ₹14,62,500/-.

9. An amount of ₹44,000/- each is liable to be paid towards loss of consortium/ filial consortium to all the four claimants. Another amount of ₹16,500/- each is liable to be paid towards funeral expenses and the loss of estate. After adding all these amounts, total compensation works out to ₹16,71,500/-.

10. Consequently, the present appeal is hereby partly allowed. Compensation amount of ₹21,40,000/- as allowed by the Tribunal is hereby reduced to ₹16,71,500/- payable by appellant- Insurance Company. Amount to be paid to the claimants in the same proportion as allowed by the Tribunal.

Disposed of.

December 05, 2022 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No