IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 7142/2016

Date of decision:19/12/2022

New India Assurance Company Limited.

………………Appellant

Vs.

Gurdev Kaur and others

…………………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Pathania, Advocate for
Mr. RC Kapoor, Advocate for the appellant

Mr.Ashwani Arora, Advocate for respondents 1 to 4.

Mr.Ashish Gupta, Advocate for
Mr.Deepak Sonak, Advocate for respondent nos. 5 & 6.

Nidhi Gupta, J.

Present appeal has been filed by the Insurance Company seeking setting aside of the impugned Award dated 6.8.2016 passed by Motor Accident Claims Tribunal, SAS Nagar-Mohali (hereinafter referred to as 'the Tribunal) in MACT Case NO.110/8.10.2015 whereby respondent nos. 1 to 4/ claimants were awarded a total compensation of Rs.28,82,240/- along with interest @ 6% per annum from the date of filing of the claim petition till actual realization, which was further ordered to be increased to 9% if the compensation was not deposited within two months. The compensation was awarded on account of death of Bachittar Singh-57 years old, in a motor vehicular accident that took place on 27.9.2015 due to rash and negligent driving of truck bearing registration No. PB-03T-9937 (hereinafter referred to as 'the offending vehicle') by respondent no.5-driver of the offending vehicle. Claimants before the Tribunal were the widow of deceased-claimant No.1; two major sons of the deceased being claimants No. 2 and 3; and claimant no. 4 being the married daughter of the deceased.

Learned Tribunal on the basis of the material before it concluded that deceased Bachittar Singh had died in a motor vehicular accident that took place on 27.9.2015 due to rash and negligent driving of the offending vehicle by respondent no.5. The offending vehicle was owned by respondent no.6 and insured by appellant.

Learned counsel for the appellant assails the impugned Award inter alia on the ground that quantum of compensation awarded to the respondents 1 to 4 is on the higher side; and that the Tribunal is in patent error in taking the salary of the deceased to be Rs.37,046/- per month which admittedly included some personal allowances such as entertainment allowance, washing allowance, mobile allowance etc. It is submitted by the learned counsel that ld. Tribunal should have deducted these allowances which came to a total of Rs.1176/- p.m. while assessing the monthly income of the deceased which, after abovesaid deductions come to Rs.35,870/-. It is further submitted that 50% deduction ought to have been made by way of personal expenses of the deceased in view of the fact that respondent nos. 2 to 4 were married sons and daughter of the deceased and could therefore, not be treated as dependents. The third and final contention of the learned counsel for the appellant Insurance Company is that the deceased was 57 years old at the time of his death and was due to retire shortly and therefore, split multiplier should have been applied, however, submits that this argument is not pressed.

Per contra, learned counsel for the respondents/claimants submits that as is evident from para 15 of the Award, 1/3rd income has been deducted on account of personal and living expenses and it is clear that respondent no.4, the married daughter of the deceased has not been included as a dependent. It is further stated that as is evident from Memo of parties all the claimants are residing together and therefore, the Tribunal is not in error in including respondents 2 and 3 herein who are married sons of the deceased, as dependents. It is further submitted that as per law laid down by Hon'ble Supreme Court in **National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680**, only tax has to be deducted from the income of the deceased and not the allowances. It is accordingly submitted that there is no error in the impugned Award and the same deserves to be sustained.

I have heard learned counsel for the parties.

A perusal of para 61.4 of the **Pranay Sethi's case (supra)** shows that Hon'ble Supreme Court has held therein '*the established income means the income minus the tax component*'. Further, as per law laid down by the Hon'ble Supreme Court in **Manasvi Jain vs. Delhi Transport Corporation, SCC Law Finder Doc Id #546664**, in similar circumstances, Hon'ble Supreme Court had held as under:-

> **"**Quantum-Deductions-Deductions on account of GPF, house rent, insurance, income tax, etc.—whether deductions on account of GPF, house rent, insurance premium, etc. are admissible for computing net income of the deceased for the purpose of

> assessment of dependency of claimants—Held: no; deduction towards income tax/surcharge should be considered to arrive at net income of the deceased.
>
> 13. ………. Considering the decision of 1968(SC), in our opinion, except contribution towards income tax, the other voluntary contributions made by the deceased, which are in the nature of savings, cannot be deducted from the monthly salary of the deceased to decide his net salary or take-home salary….”

Therefore, it has been clearly held by the Hon’ble Supreme Court that voluntary contributions will be included and considered a part of the salary, and only income-tax can be deducted while assessing income. Further, deduction of $1/3^{rd}$ towards personal expenses is held to be correct, being in accordance with numerous decisions rendered by this Court including in **2017 ACJ 1868 ‘Oriental Insurance company ltd. Vs. Premwati and anr’;** and **FAO 2879 of 2013 Shriram General Insurance Co Ltd Vs. Veena Chadda and others’.**

Learned counsel for the appellant-Insurance Company is unable to controvert this position in law. Accordingly, finding no merit in this appeal the same is hereby dismissed.

19.12.2022 **(Nidhi Gupta)**
Joshi **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes/No**

RAJINDER PARSHAD JOSHI
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I attest to the accuracy and integrity of this document