**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on: 08.12.2022

Pronounced on:15.12.2022

1. FAO-897-2016 (O&M)

Cholamandalam M.S. General Insurance Co. Ltd. …….….…Appellant

Versus

Lata Yadav & Others ……..…Respondents

2. FAO-4474-2016(O&M)

Lata Yadav & others ....Appellants

Versus

Hawa Singh & Ors. ....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rajneesh Malhotra, Advocate, &
Ms. Yagyashree Singh, Advocate,
for the Insurance Company in both the cases.

None for the claimants in both the cases.

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HARKESH MANUJA, J.

CM-15390-CII-2016 in FAO-4474-2016:

This is an application seeking condonation of delay of 125 days in filing the appeal.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay, thus, the same is allowed and delay of 125 days in filing the appeal is condoned.

Main Case:

This order of mine shall dispose of two appeals bearing FAO No. 897 of 2016 titled as "Cholamandalam M.S General Insurance Company Ltd. Vs. Lata Yadav & Ors." (filed by Insurance Company for setting aside the award) and another bearing FAO No. 4474 of 2016 titled as "Lata Yadav & Others Vs Hawa Singh & others" (filed by claimants/appellants for enhancement of compensation).

For convenience, the facts are taken from FAO 897 of 2016 i.e. the appeal filed on behalf of the Insurance Company.

Brief facts of the case are that on account of death of deceased Neeraj in a road accident on 20.08.2013, a claim petition was filed by his dependants- respondent No. 1 to 5 before the learned Tribunal. It was claimed that he was having two sources of income, firstly, he was running a coaching institute in the name and style of "Nirmal Coaching Institute" in Mahendragarh and earning Rs. 25,000/- per month from the same. Secondly, he was working as a visiting faculty of Mathematics at "Saxena Success Point" in Delhi since April, 2013 and had received Rs. 1,20,000 as remuneration till the time of his unfortunate death and therefore, he was earning approximately Rs. 50,000 per month.

After going through the claim petition and evaluating the evidence led by both the parties, learned Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of respondent No.6/ driver. Learned Tribunal assessed the income of deceased from the coaching institute to be Rs.15,000 per month and Rs. 25,000 per month as a visiting faculty in "Saxena

Success Point" and therefore, compensation was calculated after assessing his monthly income as Rs. 40,000 and finally learned Tribunal awarded compensation in the following manner: -

S.No	Heads of Claim	Amount (in Rs)
1.	Loss of dependency	Rs,61,20,000/-
2.	Funeral Expenses	Rs.25,000/-
3.	Loss of Consortium	Rs.1,00,000/-
4.	Loss of care and guidance	Rs.20,000/-
	Total	Rs.62,65,000/-

With regard to the liabilities, learned Tribunal held that respondents No.6 & 7 i.e. driver/ owner of the offending vehicle and appellant/ Insurance Company, respectively, were jointly and severally liable to pay the compensation amount, however, the whole of the liability was to be borne by appellant in terms of the insurance policy under the contract of indemnity.

It is the said award dated 08.10.2015 which has been impugned by way of present two appeals.

Learned counsel for the appellant/ Insurance Company contends that income from both the sources have been considered on the higher side and specifically in the scenario when the ITR from "Saxena Success Point", showing that Rs.1,20,000/- were paid to the deceased, was not brought on record. In addition, he contends that his submission is also substantiated from the fact that it is the admitted case of the claimants that deceased was not paying any income tax. He further contends that in any case, if the annual income is assessed more than Rs. 2 Lakh, appropriate tax is liable to be deducted from his income. He also contends that it has been admitted by PW5- Amit Saxena, proprietor of Saxena Success Point that the distance between his coaching institute and the place of residence of deceased was approximately 100 KM and therefore, he must be incurring expenses of at least Rs. 5,000 per month in transportation and that amount was also liable to be deducted from his income.

I have heard learned counsel for appellant/ Insurance Company and gone through the paper book as well as record of the case. With respect to the argument of learned counsel for the appellant/ Insurance Company regarding the higher income assessed from both the sources, I do not find much substance. It is the consistent case of the claimants that deceased started his coaching institute in October, 2012 and he had to shift his coaching institute in December, 2012 to a new place due to the paucity of the space. Even enrollment forms of approximately 85 students were also brought on record as Ex. P-34 to P-122. It has also come on record in the testimony of PW7 - Mangal Singh, who was working as a clerk in “Nirmal Coaching Institute”, that he was being paid salary of Rs. 3,000 per month. PW- 3, Babu Lal Yadav, new landlord in whose shop the coaching institute was running lately, also deposed to the effect that deceased was paying rent of Rs.7,000 per month and the rent receipts were also brought on record as Ex. P-6 to P-8. In these circumstance, income of deceased from coaching institute assessed at Rs. 15,000 per month, cannot be said to be on higher side when he was paying rent of Rs. 7,000 per month and paying salary of Rs. 3,000 per month for running the same.

Similarly, income assessed as a visiting faculty of “Saxena Success Point” also does not seem to be on the higher side. Certificate issued by the proprietor of “Saxena Success Point” was brought on record as Ex. P-24, which was corroborated by the testimony of PW5-Amit Saxena. It was also deposed by him that the amount paid to deceased was even shown by him in the ITR of Coaching Institute and the originals were present with him at the time of deposition. Only because this ITR was not brought on record, does not nullify the claim of the claimants regarding the income of the deceased, as neither any objection was raised by the appellant at that point nor any pleadings/ application was made for calling upon claimants to bring the ITR on record. Therefore, in view of the discussion made above, his income assessed by the learned Tribunal from “Saxena Success Point” at Rs. 25,000 per month is also upheld. In this context, it would also be appropriate to take notice of the fact that the deceased was a well qualified person having the degree of engineering as well as degree of Masters in Business Administration and these degrees were also brought on record as Ex P-22 and P-23.

Objection raised by the learned Counsel for the appellant/ Insurance Company that no income tax was being paid by the deceased and therefore, his income should be assessed on lower side, is also liable to be discarded. In financial year 2012-13, the deceased earned only from the month of October onwards i.e. only for 6 months and his income from “Saxena Success Point” started from April, 2013 onwards only, so no question arose for him paying income tax for financial year 2012-13 as his income was much less than required tax criteria. His combined and higher income started from April, 2013 only and for his income in financial year 2013-14, he was liable to file the ITR only in the year 2014, but as he expired in August, 2013, this scenario could never arise. Therefore, no question can be raised over his income on the basis that he was not filing ITR.

However, there is force in the argument of the learned Counsel for the appellant/ Insurance Company that as the coaching institute/ “Saxena Success Point” was at approximately 100 km away from his residence, he must be incurring Rs. 5,000 towards transportation and therefore, his net income from “Saxena Success Point” is assessed at Rs. 20,000 per month.

There is also force in the argument of the learned Counsel for the appellant/ Insurance Company that income tax is also liable to be deducted from his income as applicable. As noted in the order dated 15.02.2016 of this court in the present case, in financial year 2013-14 there was no tax payable up to the income of Rs. 2,00,000 and apart from that savings of Rs. 1,00,000 were also exempted from any tax liability, therefore, for the income upto Rs.3,00,000, no tax was liable to be deducted. However, from the income above Rs. 3,00,000, income tax @10% was applicable and hence, his annual income comes out to be Rs. 4,08,000 (Rs. 35,000 X 12 – 10% of Rs. 1,20,000).

In view of judgment of Hon’ble Apex Court in **“Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another”**, reported as 2009(3) R.C.R (Civil) 77, and **“National Insurance Company Ltd. Vs. Pranay Sethi and others”**, reported as 2017(4) RCR (Civil) 1009, compensation awarded under conventional heads is also required to be reassessed. As the deceased was 26 years at the time of his death and engaged in a private job, the future prospects should have been awarded @ 40% of annual income. As the number of dependents was five, deduction of ¼th on account of personnel expenses is correct. Besides this, with respect to the compensation awarded under the other conventional heads, applying the principles of law laid down by Hon'ble Supreme Court in **Pranay Sethi's** case (supra), the claimants are entitled for Rs.16,500/- as compensation under the head of funeral expenses, loss of consortium (parental, spousal and filial) is to be awarded to the tune of Rs.44,000/- x 5 (Rs.2,20,000/-) and Rs.16,500/- towards loss of estate by applying 10% increase under the conventional heads.

In view of what has been stated hereinabove, the appellants/claimants shall be entitled for the grant of following compensation:-

Sr.No.	Nature	Amount in Rupees
1.	Annual Income of deceased	Rs.4,08,000/-
2.	Add 40% of Future prospects	Rs.1,63,200/-
3	Total Income (Rs.4,08,000/- + Rs.1,63,200)	Rs.5,71,200/-
4.	Deduction ¼th (Rs.5,71,200/4)	Rs.1,42,800/-
5.	Multiplier of 17 as per age of 27 years (Rs.4,28,400/- X 17)	Rs.72,82,800/-
7.	Funeral Expenses	Rs.16,500/-
8.	Loss of Consortium (Rs.44,000x5)	Rs.2,20,000/-
9.	Loss of Estate	Rs.16,500/-
	Total Compensation	Rs.75,35,800/-
	Amount Awarded by the Tribunal	Rs.62,65,000/-
	Enhanced Amount	Rs.12,70,800/-

The grant of interest @ 7.5% per annum is not just in view of the facts and circumstances of the present case; rather as per the observations made by the Hon'ble Supreme Court in **Smt. Supe Dei and others Vs. National Insurance Company Limited and other,(2009) (4) SCC 513** approved in a subsequent judgment titled as **Puttamma and others Vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443**, the interest is enhanced to 9% per annum on the amount of compensation awarded to the claimants from the date of institution of claim petition till its realization. Needless to mention here that the amount of compensation already paid to the claims shall be deducted from the enhanced compensation.

Disposed off in the above terms.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARKESH MANUJA)
JUDGE

December 15, 2022
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Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*