IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-6974-2018 (O&M) and
XOBJC-55-2019(O&M)**

Reserved on: December 07, 2022

Pronounced on: December 09, 2022

National Insurance Co. Ltd. …Appellant

Versus

Sundara and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jaiswal, Advocate for the appellant.

Mr. Dheeraj Narula, Advocate,
for respondents No.1 to 5 (cross-objectors).

****

HARKESH MANUJA, J.

This order of mine shall dispose of an appeal filed at the instance of Insurance Company impugning the award dated 31.08.2018 passed by learned Motor Vehicle Accident Claims Tribunal, Sirsa (hereinafter referred to as "the Tribunal"). Further, this order shall also dispose of cross-objections filed at the instance of Claimants-Respondents No. 1 to 5 seeking enhancement of compensation.

For convenience, the facts are taken from FAO No. 6974 of 2018, filed at the instance of appellant-Insurance Company.

In a claim petition filed by claimants on account of death of Laddu on 16.11.2017, due to road accident, learned Tribunal after holding respondent No. 6 to be rash and negligent while driving the offending vehicle, awarded compensation in the following manner :-

Sr.No.	Particulars	Amount (Rs.)
1.	Loss of Dependency	Rs.15,64,920/-
2.	Loss of consortium	Rs.50,000/-

3.	Medical expenses	Rs.70,650/-
	TOTAL COMPENSATION:	Rs.16,85,570/-

In the present appeal, appellant- Insurance Company has challenged the award dated 31.08.2018 only on the aspect of quantum of compensation praying for reduction of the same. On the other hand, claimants/ respondents no. 1 to 5 have filed cross objections praying for enhancement of the compensation.

I have heard the arguments advanced by learned counsel for both the parties and gone through the paper-book as well as the cross-objections filed at the instance of claimants/ respondents No.1 to 5 and records of the case herein, my discussion on merits under different heads is as below.

Future prospects

Learned counsel for the Insurance Company contends that in view of the law laid down by the Hon'ble Supreme Court in **"National Insurance Company Limited Vs. Pranay Sethi and Others"** reported as 2017(4) R.C.R CIVIL 100, as the age of the deceased was considered by the learned Tribunal as 40 years, on the basis of Post mortem report, future prospects should have been awarded @ 25% instead of 40%.

On the other hand, learned counsel for the claimants contends that as per the Aadhar card, age of the deceased was 34 years and therefore, multiplier and future prospects should be taken accordingly.

There is no doubt that as per the Aadhar card, age of the deceased was 34 years at the time of accident, but in the claim petition filed at the instance of claimants- Respondents No. 1 to 5, his age has been mentioned as 39 years. Therefore, in view of the contradictory stand taken by the claimants, Aadhar card cannot be relied upon as a credible source of age in this case. Further, in this case, date of birth of many dependants including that of deceased has been shown as 1st January, which is generally the case, when the exact date of birth of a person is not known. In addition, if we take into consideration the date of birth of deceased as 01.01.1983 and his son Ratan Singh as 22.07.1998 as per aadhar card, the age of deceased comes out to be 15 years at the time of birth of his son, which also seems to be highly improbable. Therefore, learned Tribunal has rightly taken the age of the deceased as 40 years on the basis of postmortem report. In that circumstance, it cannot be denied that the learned Tribunal has wrongly considered the future prospects @ 40% and it should have been awarded @ 25% as he was in the age bracket of 40 to 50 years and working in private institution.

Income of the deceased:

Learned counsel for the claimants- Respondents No.1 to 5, contends that it was prayed before the learned Tribunal that deceased was earning Rs.10,500/- per month and even in the statement of PW3-Lalit Kumar who appeared on behalf of Labour Department, it has come on record that the deceased would have earned Rs. 350/- per day in case he was provided employment on the recommendation of the department. He further contends that even as per the letter dated 15.05.2018 issued by Labour Commissioner, Haryana, minimum wages for the skilled labourer was Rs.9,518/- per month.

In this regard, learned counsel for the appellate/ Insurance Company contends that as there was nothing to substantiate that the deceased was a skilled labourer, learned Tribunal rightly assessed income as Rs. 8,280/- per month as a labourer. He further submits that the statement of PW3-Lalit Kumar that income of the deceased was Rs.350/- per day was only on the basis of the application form of the deceased submitted with the Labour department and apart from that there was no guarantee that a labourer enrolled with the department will get regular work and income and there could be many days when there is no work and in these circumstances, no interference is warranted on this account.

I find force in the argument of the learned counsel of the appellant/ Insurance Company. The application form (brought on record as Ex-P1) and the card issued by the Labour Department (brought on record as Ex-P2) shows that deceased was illiterate and despite there being option of "mistri" in the form as well, he himself chose the option of labourer and enrolled himself as a labourer only. Though learned Tribunal did not give any specific finding whether deceased was working as a labourer or a skilled labourer, however, income assessed by it pertained to labourer, and rightly so as nothing was brought on record to substatiate that he was working as a skilled labourer. As stated by the PW-3 that it cannot be ascertained that deceased would have got regular work, his income as Rs. 350 per day is not substantiated. Therefore the income assessed by the learner terminal as Rs. 8280/- per month is rightly assessed for the purpose of calculation of the compensation amount.

Funeral expenses and Conventional heads:

Learned counsel for the Insurance Company contends that as claimants got expenses towards funeral expenses from the Labour Department, no compensation shall be awarded on that account. Per Contra, learned counsel for the claimants contends that the amount granted by the government is not liable to be deducted from the compensation amount as a tort-feaser or wrong doer cannot take this objection. He further contends that in view of **Pranay Sethi's** case (supra) compensation under conventional heads shall be appropriately awarded as there were five dependants.

Regarding funeral expenses, I do not find any force in the argument of learned counsel of the claimants as this part of the compensation is on the basis of expenses incurred by the dependents of the deceased and in the circumstance wherein this expense has already been reimbursed by the Labour Department, they are not entitled to claim this amount again from the Insurance Company. However, in view of **Pranay Sethi's** case (supra), it cannot be denied that claimants are entitled for Rs. 2,20,000/- on account of spousal, parental and filial consortium apart from Rs.16,500/- on account of loss of estate.

No other argument has been raised.

Thus, in view of the discussions made hereinabove, the claimants/ respondents No.1 to 5 herein are entitled for following compensation, as detailed in the table given hereunder :-

Sr.No.	***Particulars***	***Amount (Rs.)***
1.	*Annual Income of deceased (*Rs.8280 X 12)	*Rs. 99,360/-*
2.	*Add 25% of Future prospects*	*Rs.24,840/-*
3.	*Total Income*	*Rs.1,24,200/-*
4.	*Deduction (1/4th)*	*Rs.93,150/-*
5.	*Multiplier of 15 as per age of 40 years (Rs.93,150x 15)*	*Rs.13,97,250/-*
6.	*Loss of Consortium (Rs.44000 x 5)*	*Rs.2,20,000/-*
7.	*Loss of Estate*	*Rs.16,500/-*

8.	*Medical expenses*	Rs.70,650/-
	Total Compensation	*Rs.17,04,400/-*
	Amount Awarded by the Tribunal	Rs.16,85,570/-
	Enhanced Amount	*Rs.18,830/-*

The grant of interest @ 7% 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.

The present appeal as well as the X-objections are disposed of in the manner indicated hereinabove.

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

(HARKESH MANUJA)
JUDGE

December 09, 2022
sanjay

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