2023:PHHC:054361

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RA-CR-17-2023 in FAO-3191-2017
Date of decision: 18.04.2023

The New India Assurance Company Ltd. .....Applicant/Appellant

Versus

Neelu Singh and others .....Non-applicants/Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ashwani Talwar, Advocate
for the applicant/appellant.

Mr. Ashwani Arora, Advocate
for the non-applicants/respondents No.1 to 4.

Ms. Pushpa Gupta, Advocate
for the non-applicants/respondents No.5 and 6.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The instant review application has been filed on behalf of the applicant/appellant-insurance company under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 for the review of the judgment/order dated 16.11.2022 (Annexure A-1).

2. The appeal preferred by the insurance company i.e. FAO-3191-2017 along with the appeal of the claimants i.e. FAO-6381-2017 was disposed of by this Court by enhancing the quantum of compensation from ₹11,35,800/- to ₹13,79,000/- along with interest @ 8% per annum from the date of preferring the claim petition.

3. The instant review application has been filed only on the limited issue of component qua the future prospects which were taken at 25% instead of 10%.

4. Learned counsel appearing for the applicant/appellant *inter alia* contends that the age of the deceased was 50 years and 07 months on the date of accident. Therefore, as per the law settled by the Hon'ble Supreme Court in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270***, the future prospects applicable would be 10% instead of 25% as the deceased fell into the age bracket of **"50 to 60 years"** and not **"40 to 50 years"**.

5. A prayer has, thus, been made to modify the judgment dated 16.11.2022 accordingly in terms of ***Pranay Sethi's case (supra)***.

6. Per contra, learned counsel appearing for the non-applicants/respondents No.1 to 4 has opposed the prayer and submissions made by the counsel for the insurance company. He submits that the instant application seeking review of the judgment dated 16.11.2022 is not maintainable as it has not been filed by the same counsel, who argued the main case. He further submits that there is no error apparent in the order dated 16.11.2022 passed by this Court which would warrant acceptance of the instant review application. It has still further been contended that since the deceased had not completed the age of 51 years on the date of the accident, the future prospects applicable would have been 25%, which had been rightly assessed by this Court while passing the judgment dated 16.11.2022. Furthermore, learned counsel has argued that merely because the deceased was just a few months above 50 years of age, his case would not fall within the age bracket of **"50 to 60 years"** while assessing future prospects, as even the multiplier with respect to the age of the deceased was taken as "13" i.e. applicable for persons falling within

the age of 46-50 years. Learned counsel, in support, has placed reliance upon ***M.H. Uma Maheshwari and others Vs. United India Insurance Co. Ltd. and another : 2020 ACJ 1865*** and ***Sow. Chandra Kanta and another Vs. Sheik Habib : 1975 AIR (Supreme Court) 1500***.

7. I have heard learned counsel for the parties and perused the relevant material on record.

8. This Court does not find any merit in the submissions made by the learned counsel for the non-applicants/respondents No.1 to 4 qua the non-maintainability of the instant review application. Filing of a review petition by the same counsel, who had argued the main case, is a rule of propriety, which can be waived off in appropriate cases. The applicant, being an insurance company, has a panel of lawyers. It is the discretion of the insurance company to allocate cases to the lawyers who are empanelled with it. Hence, the submissions made by the learned counsel qua the non-maintainability of the review application being argued by some other counsel is devoid of merit.

9. Coming to the merits of the application, this Court finds substance in the submissions made by learned counsel for the applicant. The Constitution Bench of the Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***, while dealing with future prospects in the case of a deceased who was self-employed, has held as under:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *(i) XXXX XXXX XXXX*
>
> *(ii) XXXX XXXX XXXX*
>
> *(iiii) XXXX XXXX XXXX*
>
> *(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income*

> *should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and* ***10% where the deceased was between the age of 50 to 60 years*** *should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

10. A perusal of the above, leaves no manner of doubt that when a deceased is **"between 50 to 60 years"** of age, an addition of 10% is to be made to his established income. In the present case, the age of the deceased admittedly was 50 years and 07 months on the date of accident. Therefore, an addition of 10% towards future prospects should have been made instead of 25% as has been rightly argued by the learned counsel for the applicant/appellant.

11. It would also be relevant to observe here that addition of future prospects cannot be equated with the application of the relevant multiplier for the purpose of assessing loss of future income, as the age brackets for both of them are different as per settled law. The age bracket for the application of multiplier for assessing loss of income of a deceased, for example as per ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** is "18" for persons between the age of 15 to 20 years as well as for 21 to 25 years, "17" for 26 to 30 years, and so on, whereas on the other hand while assessing future prospects, as per ***Pranay Sethi's case (supra)***, it would be the following:-

Sr. No.	Age Bracket	Self Employed	Permanent Job
1.	Below 40 Years	40%	50%
2.	40-50 years	25%	30%
3.	50-60 years	10%	15%

12. In the above circumstances, there has indeed been an error while assessing future prospects of the deceased. Hence, the instant application for review of order dated 16.11.2022 is allowed.

13. The revised calculation of the amount payable to the claimants stands modified and would thus be as under:-

Sr. No.	**Head**	**Amount**
1.	Monthly Income	₹8,000/-
2.	Annual Income	₹8,000/- x 12 = ₹96,000/-
3.	Future prospects (10%)	₹96,000/- x 10% = ₹9,600/-
4.	Total annual income	₹96,000/- + ₹9,600/- = ₹1,05,600/-
5.	Deductions towards personal expenses (1/4th)	₹1,05,600/- (/) 4 = ₹26,400/-
6.	Loss of annual future earnings	₹1,05,600/- (-) ₹26,400/- = ₹79,200/-
7.	Multiplier	13
8.	Loss of future earnings	₹90,000/- x 13 = ₹10,29,600/-
9.	Loss of consortium	₹44,000/- x 4 = ₹1,76,000/-
10.	Funeral expenses	₹16,500/-
11.	Loss of estate	₹16,500/
	Total compensation	₹12,38,600/-

14. The order dated 16.11.2022 is modified to the extent that the claimants are held entitled to a total sum of ₹12,38,600/- as compensation, instead of ₹13,79,000/-, along with interest @ 8% per annum from the date of filing of claim petition till its actual realization. The compensation amount would be apportioned to the claimants in the same ratio as directed by learned Tribunal.

18.04.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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