IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No.3404 of 2019 (O&M)
DATE OF DECISION : 20th FEBRUARY, 2023

National Insurance Company Ltd.

…. Appellant

Versus

Afsari Begum and others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Paul S.Saini, Advocate and
Ms. Komal Jit Kaur, Advocate for the appellant.

Mr. Wazir Singh, Advocate for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

The present appeal has been filed by the appellant/Insurance Company challenging the award dated 01.04.2019 passed by the Motor Accident Claims Tribunal, Karnal (for short, the Tribunal), whereby an amount of ₹24,12,000/- has been awarded to the claimants as compensation along with interest on account of death of Khairudeen @ Shehrul in a motor vehicle accident.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The brief facts of the case, as mentioned in the file are that on 24.12.2017 Khairudeen @ Shehrul along with Sourabh and Mujahid were returning to the factory on foot after purchasing goods. When at about 8.00 PM, they reached on Kohand-Panipat Road, a motorcycle bearing registration No.HR-07U-9431 (hereinafter referred to as the 'offending vehicle') came from opposite side, which was being driven by respondent No.1 in a rash and negligent manner and at a high speed. The said motorcycle struck against Khairudeen @ Shehrul. As a result, he fell down on the road and received multiple grievous injuries on various parts of the body. After the accident, Khairudeen @ Shehrul was taken to KCGMCH, Karnal for treatment, where he succumbed to the injuries. Regarding the said accident, an FIR No.748 dated 26.12.2017, under Sections 279 and 304-A IPC was also registered at Police Station, Gharunda, Karnal.

Asserting these facts, the claim petition was filed by the widow and four minor children of the deceased claiming therein that a sum of ₹2.00 Lakhs was spent on treatment, last rites and transportation of the dead body. It was further asserted in the claim petition that the deceased was doing private job in Kohinoor Carpets, Kohand and he used to earn ₹20,000/- per month. He was 29 years of age. The claimants, were totally dependent upon him.

Respondent Nos.1 and 2 filed their joint written statement taking routine preliminary objections. On merits the factum of accident was denied and it was pleaded that a false FIR has been got registered. Rest of the averments of the claimants were also denied. The respondent No.3-Insurance company filed a separate written statement and took the routine preliminary objections. On merits, it was asserted that no accident had taken place with the offending vehicle. The offending vehicle had been falsely implicated by twisting the facts. The FIR was registered after a delay of two days.

The claimant, widow of the deceased herself appeared as PW-1 and tendered her affidavit. PW-2 Sourabh was examined as eye witness. Beside this, the copy of the FIR was tendered in evidence. On the other hand, no evidence was led; either by the owner and driver of the offending vehicle or by the respondent-Insurance company.

After assessing the material on record, the Tribunal has taken the income of the deceased to be ₹10,000/- per month as a skilled labour. The age of the deceased is taken to be 30 years. Accordingly, a deduction of 1/4th has been made and the multiplier of 17 is applied. As per this, the compensation on account of loss of dependency has been awarded at ₹15,30,000/-. Beside this, under the conventional heads, the claimants have been held entitled to compensation on account of loss of consortium ₹40000/- to the widow, loss of estate ₹15000/-, and an amount of ₹15,000/- towards transport and funeral expenses. Beside this, an amount of ₹2,00,000/- has been awarded on account of love and affection to the children i.e. ₹50,000/- each to minor children. Accordingly, a total amount of ₹24,12,000/- has been awarded as compensation.

Arguing the case, learned counsel for the appellant has submitted that the Tribunal has gone wrong in law in taking the income of the deceased at ₹10,000/- per month. Rather, the income of the deceased should have been taken at ₹8,200/- per month, treating him to be an un-skilled labour as per the statutory notification under the Minimum Wages Act. Beside this, the compensation on account of conventional heads have also been awarded on higher side in violation of the law laid down by Hon'ble the Supreme Court in the cases of ***National Insurance Company Limited Versus Pranay Sethi and others, (2017) 16 SCC 680*** and ***Magma General Insurance Co. Ltd. Versus Nanu Ram @ Chuhru Ram and others, 2018 ACJ 2782 (SC).*** The same deserves to be reduced.

On the other hand, learned counsel for the respondent/claimants has submitted that income of the deceased has been taken at the minimum level of the prevalent income of a labourer in skilled category. Although the same should have been taken at a higher level, however, by any means, the same does not call for any reduction. The counsel has further submitted that even as per the notification relied upon by the counsel for the appellant, for the category of skilled worker ₹10,000/- has been prescribed as the minimum wages. Hence, no fault can be found with the assessment of income made by the Tribunal. However, the counsel for the respondents/claimants has not been able to dispute neither the proposition of law laid down by Hon'ble the Supreme Court in the cases of ***Pranay Sethi*** (supra) and ***Nanu Ram @ Chuhru Ram and others*** (supra) nor has he disputed the amounts awarded under the various conventional heads.

Having heard the counsel for the parties and having perused the case file, this Court does not find any substance in the argument raised by the counsel for the appellant qua the quantum of compensation on account of loss of income. Although the counsel for the appellant has submitted that the income of the deceased should have been taken as per the Minimum Wages Act in unskilled category, however, neither any notification of minimum wages was placed on record, nor the minimum wages can be any measure of the income of the deceased in case an occupation is pleaded in the claim petition and the relevant evidence is led on file. In the present case, it is not even in dispute that the wife of the deceased has been examined as a witness to show the occupation of the deceased as a skilled worker. Although the proof of the income from the employment may not have been brought on record, however, for the skilled category, even the alleged notification under the Minimum Wages Act prescribes ₹10,000/- as minimum wages. Therefore, by any means, no fault could be found with the assessment of the income made by the Tribunal. Hence, this argument of the counsel for the appellant is rejected.

However, the compensation granted to the claimants on account of conventional heads have to be brought in consonance with the law laid down by Hon'ble the Supreme Court in the cases of ***Pranay Sethi*** (supra) and ***Nanu Ram @ Chuhru Ram and others*** (supra). Hence, the compensation awarded to the claimants on account of conventional heads is modified as given below and the claimants are held entitled to the total compensation as follows:-

Sr. No.	**Head**	**Amount assessed**
1	Income	₹10,000/- per month 10,000/- x 12 = ₹1,20,000/- per annum
2	Deduction @ 1/4th	₹1,20,000/- x 1/4th = ₹30,000/- ₹1,20,000/- – 30,000/- = ₹90,000/-
3	Multiplier @ 17	₹90,000/- x 17 = ₹15,30,000/-
4.	Future prospects @ 40%	₹6,12,000/-

Sr. No.	Head	Amount assessed
5	Loss of consortium	₹40,000/- x 5 = ₹2,00,000/-
6	Loss of estate	₹15,000/-
7	Transportation and funeral expenses	₹15,000/-
8	**Total**	**₹23,72,000/-**
9	Compensation awarded by the Tribunal	₹24,12,000/-
10	**Compensation reduced**	₹24,12,000/- – ₹23,72,000/- = **40,000/-**

However, the interest is retained as was awarded by the Tribunal. The respondent/insurance company is directed to deposit the balance amount of compensation as calculated by this Court before the Tribunal within a period of six weeks from today for onwards disbursal to the claimants.

Disposed of in the above terms.

All pending miscellaneous application(s) stands disposed of as such.

20th FEBRUARY, 2023
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*