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2023:PHHC:067745

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7808-2016 (O&M)
Date of decision: 10.05.2023

United India Insurance Co. Ltd. ...Appellant

VS

Bimla Devi and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Ram Avtar, Advocate,
For the appellants.

Mr. Vikas, Advocate for
Mr. Partap Singh, Advocate,
For respondents No.1 to 5.

Mr. K.S. Dhanora, Advocate for
Ms. Sunita Nain, Advocate,
For respondents No.6 and 7.

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ARUN MONGA, J. (ORAL)

Aggrieved with the award dated 17.08.2016 rendered by Motor Accidents Claims Tribunal, Jind (for brevity, Tribunal), Insurance Company has preferred the instant appeal.

2. Learned counsel for the appellant-Insurance Company argues that learned Tribunal while awarding amount of compensation, allowed 15% increase in income of the deceased, who was 54-year old and was a Government employee, which is not permissible as per observations in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr (2009) 6 SCC 121.*** He further submits that as per the observations of the Apex Court in '***Reliance General Insurance Co. Ltd. Vs Shashi***

Sharma and others' 2016 ACJ 2723, the amount payable to the claimants under Rule 5 of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 is to be deducted from the amount of compensation.

3. Per contra, learned counsels for respondents strenuously oppose the appeal.

4. I have heard learned counsel for the parties and gone through the case file.

5. It transpires that in a cross-appeal filed by the claimants bearing FAO No.2027-2017, the compensation awarded by learned Tribunal below has been enhanced by a coordinate Bench of this Court presided over by Ms. Ritu Tagore, J. Relevant para of the judgment, *ibid* is as below:-

> *"24. The Tribunal held that the major son, petitioner No.2 (PW-4) cannot be taken as dependent on the deceased. The claimants have recorded the age of petitioner No.2 at 28 years in the petition. However, PW-4 on oath recorded his age as 24 years contrary to the pleaded version. Petitioner No.2 is a major, so cannot be considered as wholly dependent upon the deceased. He may be doing some work for his own maintenance and livelihood. His father (deceased) owned agriculture land. It can be expected that PW-2if not engaged in any other avocation, may be tilling land of his father to earn his livelihood. The Tribunal has correctly considered the widow and minor daughters as dependent on the deceased. In Sarla Verma (supra) and Pranay Sethi (supra) it is held that where the dependent family members are 4 to 6, 1/4th deduction towards personal and living expenses of the deceased should be made. In the given facts, the finding of the Tribunal is not being interfered with.*
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> *25. The learned counsel for the claimant has contended that Tribunal has awarded less compensation under the conventional heads i.e. loss of funeral expenses, loss of consortium etc.*
>
> *26. In the judgment Pranay Sethi (supra), Hon'ble the Supreme Court has set down various amounts to*

be awarded as compensation under conventional heads. The relevant extract of the judgment is reproduced hereinbelow:-

"61. (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/, -Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years."

27. Following the principles laid down by Hon'ble Supreme Court in Pranay Sethi (supra), the compensation under relevant conventional heads is reassessed as under :-

i) Loss of estate Rs. 16500/-
ii) Funeral expenses Rs.16,500/-
iii) Loss of consortium
(to all five claimants) Rs.2,20,000/- (44,000 x 5)
iv) Total Rs.2,53,000/-

By adding the aforesaid amount of Rs.2,53,000/- in the amount already assessed by the learned Tribunal i.e Rs.52,52,583/- thus, the total compensation arrives at Rs.55,05,583/- i.e. (Rs.52,52,583+ Rs.2,53,000). The enhanced amount of compensation arrives at Rs.22,999 (Rs.55,05,583 the total amount reassessed as mentioned above- Rs.54,82,584 as assessed by the Tribunal).

28. Regarding interest, it is held that learned Tribunal has granted appropriate rate of interest 9% per annum keeping in view the prevalent banking interest which is just and appropriate and requires no further increase.

29. The enhanced amount of compensation, thus, arrives at Rs.22,999/-. The enhanced amount shall also entail 9% interest per annum from the date of filing of the petition until realization by the claimants. The respondents are jointly and severally liable to pay the compensation. The respondent No.3 being the insurer is liable to indemnify the claimants at first instance and deposit the aforesaid enhanced amount with the learned Tribunal, Jind, within two months from the date of receipt of certified copy of this judgment. A copy of this order be sent to the Insurance Company for compliance."

6. I am in respectful agreement with the view taken as above. Even otherwise, the judgment of learned co-ordinate Bench cannot be altered by me. The present appeal has to necessarily be dismissed in view thereof. It is so ordered.

7. At this stage, learned counsel for appellant-Insurance Company vehemently argues that present appeal was filed prior in time and the same ought to have been considered before deciding the aforesaid appeal wherein Insurance Company was proceeded *ex parte*.

8. Be that as it may, I am not inclined to accept the argument. The Insurance Company was at liberty to appear and defend its case in FAO No.2027-2017 filed by claimants but since they have chosen not to appear and were proceeded *ex parte,* it is open for it to file an appropriate application before the same Bench giving reasons of non-appearance.

9. Needless to say that said application will be considered in accordance with law.

10. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

10.05.2023
vandana

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