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

(101) **FAO No.5428 of 2017 (O&M)**
Date of Decision : 02.05.2023

Bharti Axa General Insurance Company Limited ...Appellant

Versus

Leena Verma and others ...Respondents

AND

FAO No.4933 of 2018 (O&M)

Leena Verma and others ...Appellants

Versus

Dinesh Verma and others ..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajbir Singh, Advocate for the appellant.

Mr. Harish Chhabra, Advocate
for respondents No.1 to 3.

Mr. Arun Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for respondents No.4 and 5 in FAO No.5428 of 2017 and
for respondents No.1 and 2 in FAO No.4933 of 2018.

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Harsimran Singh Sethi J. (Oral)

1. By this common order, the abovementioned two appeals arising out of the same incident are being decided. One appeal has been filed by the

Insurance Company challenging the Award dated 09.05.2017 on the ground that the assessment of the income of the deceased has not been done as per the facts on record as the income of the deceased, which has been taken into account is not supported by the income tax return for the year in question, hence the computation of the compensation is not correct and is liable to be set aside. Whereas the claimants filed the appeal for enhancement of compensation raising the plea that the deduction allowed towards the personal expenses of the deceased in the impugned award is 1/3rd whereas keeping in view the settled principles of law only 1/4th of the income could have been deducted as personal expenses of the deceased and further the claimants are entitled for future prospects, which have not been awarded by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') along with the award of consortium for each claimant.

2. Certain facts may be noticed for the correct appreciation of the controversy in hand.

3. The accident took place on 15.10.2015 in which accident, more than one person died. The deceased, in respect of whom the present claim is raised, was travelling in Car No.CH-03Z-9549 i.e. Ford Fiesta driven by respondent No.4 Dinesh Verma whereas, the other deceased was in Car No.PB-65Q-6396. As per the allegations, the driver of Car No.PB-65Q-6396 i.e. respondent No.4 was driving the Car in a rash and negligent manner, due to which the Car went out of control and went to the other side of the road and hit Car No.CH-03Z-9549 in which accident, one Harvinder Verma, who was travelling in Car No.CH-03Z-9549 died. The claim was raised on account of the death of Harvinder Verma by making allegation that respondent No.4-Dinesh Verma was driving the Car in a rash and negligent manner, which resulted into

the death of Harvinder Verma, which claim petition has been decided by the Tribunal by the impugned Award dated 09.05.2017 and awarded compensation amounting to ₹38,26,748/-.

4. The Insurance Company is challenging the said Award on the ground that the claim being raised by the claimants of the deceased by alleging that Dinesh Verma-respondent No.4 was driving the vehicle in a rash and negligent manner is liable to be rejected and further that the income of the deceased, which has been taken as ₹4,22,516/- for the assessment year 2015-16 is not supported by any income tax return filed for the said year, hence the income of the deceased was only liable to be taken as ₹2,19,670/- keeping in view the income tax return Ex.P-21 relating to the previous year, which is on record and the Award passed by the Tribunal is liable to be modified accordingly.

5. Learned counsel for the claimants submits that once the Tribunal has already recorded a finding that for the assessment year 2015-16, the income of the deceased is ₹4,22,516/-, the same should be taken into account and the claim being raised by learned counsel for the Insurance Company in the present appeal is liable to be rejected.

6. Learned counsel for the claimants further submits that even otherwise, while computing the compensation, the Tribunal has misdirected by not allowing the future prospects as well as allowing consortium to the tune of ₹1 lac only instead of ₹1,20,000/- and deduction towards the personal expenses of the deceased was made to 1/3rd of the income while computing the compensation, however, the same should have been 1/4th of the income keeping in view the number of claimants.

7. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

8. Learned counsel for the claimants initially resisted the argument of the learned counsel for the Insurance Company that the Tribunal did not assess the income of the deceased in a manner required and wanted the assessment of income as ₹4,22,516/- but during the arguments, learned counsel for the claimants submitted that they have no objection in case, the annual income of the deceased is taken as ₹2,19,670/- keeping in view the income tax return filed for the assessment year 2014-15 and the computation of compensation be modified accordingly.

9. In respect of the argument of the learned counsel for the claimant that deduction for the income should have been 1/4th instead of 1/3rd, learned counsel for the Insurance Company submits that keeping in view the memo of parties, there are only three claimants and the mother, who is also being treated as claimant never approached the Court to raise claim hence, in the absence of any claim raised by mother of the deceased, she cannot be treated as the claimant hence, the deduction of 1/3rd is valid. Learned counsel for the Insurance Company conceded that the claimants are entitled for future prospects @25% of the income assessed and consortium should have been ₹1,20,000/- instead of ₹1 lac. as each of the claimant is entitled ₹40,000/- as consortium and the amount will come to ₹1,20,000/- whereas they have only been granted ₹1 lac.

10. Keeping in view the agreement between the parties concerned, the total compensation for which the claimants become entitled for is ₹25,69,701/-. The bifurcation of the same, which has been settled between the parties, is as under:

Income (As per ITR Ex.P-21)	₹219670/- p.a.
Future Prospects 25%	₹54918/- =₹274588/- (219670+54918)
Deduction 1/3	₹274588-91529 = ₹183059/-
Multiplier 13 & Compensation	₹183059x13 = ₹2379767/-
Medical Expenses	₹39934/-
Conventional Heads	₹120000/-
(Consortium ₹40000x3=120000)	
Funeral Exp.	₹15,000/-
Loss to estate	₹15,000/-
Total compensation	₹2569701/-

11. The award of the Tribunal dated 09.05.2017 is modified accordingly.

12. It may be noticed that interest @6% per annum which was granted by the Tribunal on the compensation awarded will be applicable and the amount of compensation for which the claimants have been found entitled for as noticed hereinbefore will also carry interest @ 6% per annum from the date it became due till the same was deposited by the Insurance Company with the Tribunal. The disbursement of the said amount to the claimants will also be in accordance with the direction given by the Tribunal only.

13. It may be noticed that the amount of compensation which has already been deposited by the Insurance Company, is in excess of their liability. A sum of ₹ 19,13,374/- i.e. 50% of the total compensation of ₹38,26,748/- as awarded by the Tribunal, has already been paid to the claimants. As per the assessment done by this Court, total compensation for which the claimants become entitled for is ₹25,69,701/ instead of ₹38,26,748/- as awarded by the

Tribunal. Hence as the sum of ₹6,56,327/- is yet to be paid to the claimants. As informed, a sum of ₹19,13,374/- is lying deposited with the Tribunal by the Insurance Company. Out of the said amount, the balance compensation to be paid to the claimants i.e. ₹6,56,327/- be released to them and the remaining amount which is lying deposited with the Tribunal be refunded back to the Insurance Company upon the application made, by attaching the present order.

14. The appeals are disposed of in the above terms.

May 02, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No