IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Cross-Objections No.1-2019 in/and
FAO 902/2018
Date of decision:13/04/2023

National Insurance Company Ltd.

…………Appellant

Vs.

Suman and others

…………Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Punit Jain, Advocate
for the appellant.

Mr. Arjun Singh, Advocate
for respondent Nos.1 to 4.

Mr. Narender Kaajla, Advocate
for respondent Nos.5 & 6.

Nidhi Gupta, J.

CM 239-CII/2019

Since there is delay of 180 days in refiling the Cross Objection, aforesaid application has been filed seeking condonation of delay.

For the reasons stated in the application, the same is allowed and delay condoned.

CM -240-CII/2019

Prayer in the present application has been made seeking exemption from filing certified copy of the Award dated 02.11.2017.

For the reasons mentioned in the application, same is allowed subject to all just exceptions.

Main Appeal.

Present appeal has been filed by the Insurance Company assailing Award dated 02.11.2017 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') passed in MAC Petition No.100/2016 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') whereby compensation of Rs.19,37,000/-along with interest @ 9% per annum, was awarded to the claimants/respondent Nos.1 to 4 herein. The four claimants are the widow, and three children of the deceased Krishan.

2. Brief facts of the case are that the learned Tribunal on the basis of the pleadings and evidence adduced before it concluded that the deceased Krishan had died due to injuries suffered by him in a motor vehicular accident that took place on 19.03.2016 due to rash and negligent driving of Car being registration No.HR-20AC-9389 (hereinafter referred to as 'the offending vehicle'), being driven by respondent No.5, owned by respondent No.6 herein, and insured by the appellant. Respondent Nos.5 & 6, and the appellant-Insurance Company, were held jointly and severely liable to pay the compensation amount.

3(i). Learned counsel for the appellant assails the impugned award primarily on the ground that the income of the deceased has been taken on the higher side as Rs.9000/- per month; whereas, the same ought to have been taken Rs.7976.20/- per month as per the relevant Minimum Wage Notification No.IR-2/15998-16118 dated 05.04.2016, applicable w.e.f. 01.01.2016. It is submitted that it was the case of the claimants before the Tribunal that prior to his death, the deceased was working as a tea vendor and was earning Rs.25,000/- per month. However, as the claimants led no evidence in support of their said contention, learned Tribunal had assessed notional income of the deceased as Rs.9000/- per month. Learned counsel submits that income ought to have been taken in accordance with aforesaid notification as Rs.7976.20/- per month (rounded off to Rs.7977/- per month).

3(ii) It is further submitted that the learned Tribunal has granted future prospects @30%. It is stated that the age of the deceased was undisputedly determined to be 43 years old at time of death on the basis of his post mortem report. It is submitted that accordingly future prospects ought to have been added @25% and not 30%.

3(iii) It is further submitted that the learned Tribunal has granted an astronomical sum of Rs,4,25,000/- under the conventional head whereas the claimants were entitled to Rs.1,90,000/- only under the conventional heads.

4. In response, it is submitted by learned counsel for the cross-objectors/claimants that the deceased was the sole bread earner of the family and the claimants, who are his widow and three children, who were wholly and solely dependent upon the deceased for their survival. It is submitted that accordingly income of the deceased ought to have been taken as Rs.25,000/- as claimed, and rate of interest should be enhanced to 18% per annum.

5. No other argument has been raised by the counsel.

6. I have heard learned Counsel.

7. A perusal of the record of the case shows that respondent No.1 herein/claimant No.1/widow of the deceased-Krishan, as PW-2 had

deposed that the deceased, prior to his death, was a tea vendor and was earning Rs.25000/- month. However, the claimants have not led even a shred of evidence as regards the employment of the deceased, let alone as proof of income. Only a bald statement was made by the respondent No.1. Therefore, as occupation/ vocation of the deceased remains unproved on record, income of the deceased has to be calculated as per judgment of the Hon'ble Supreme Court in ***'Govind Yadav Vs. New India Assurance:Law Finder Doc Id#273493',***wherein it has been held that where monthly earnings of the deceased are not proven on record, compensation has to be assessed on basis of minimum wage payable to worker at the relevant time. Accordingly, as per Notification No.IR-2/15998-16118 dated 05.04.2016 produced by the learned counsel for the appellant-Insurance Company, and undisputed by learned counsel for the claimants/cross-objectors, notional income of the deceased has to be taken as Rs.7977/- per month.

7(i) Further it remains undisputed on record that the deceased was 43 years of age at the time of death. Accordingly, as per judgment of Hon'ble Supreme Court in ***National Insurance Company Limited v Pranay Sethi and others (2017) 16 SCC 680,*** future prospects have to be added @25% to the income of the deceased. Learned Tribunal is in error in making addition of 30% towards future prospects.

7(ii) As the claimants are four in number, deduction of 1/4th towards personal expenses has been correctly made; and even multiplier of 14 has been correctly applied.

7(iii) However, under the conventional heads, learned Tribunal has granted Rs.1 lacs towards spousal consortium to the respondent No.1/widow of the deceased; and Rs.1 lac each towards loss of love and affection to respondents No.2 to 4/children of the deceased. Again, as per the judgment of the Hon'ble Supreme Court in ***Pranay Sethi's* case** (supra) claimants are entitled to Rs.40,000/- each towards spousal and parental consortium respectively.

7(iv) Learned Tribunal has granted Rs.25,000/- towards funeral expenses whereas claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15000/- towards loss of estate.

8. Accordingly, in view of the discussion hereinabove, the compensation is reworked as follows:-

Sr. No.	**Head**	**MACT (in Rupees)**	**Reworked in present appeal (in Rupees)**
1.	Monthly Income	9000	7977 (as per min wages)
2.	Future prospects	30%	25% (as age of deceased 43 years)
3.	Deduction towards personal expenses	1/4th	1/4th
4	Multiplier	14	14
5.	Consortium	1 lac to widow	40,000/-
6.	Love and affection to claimant No.2 to 4	3 lac	40,000x3=1,20,000 (parental consortium)
7.	Funeral expenses	25,000/-	15,000/-
8.	Loss of Estate	Nil	15,000/-
	Total	**19,37,000**	**14,46,378**

9. It may be pointed out that while issuing Notice of Motion vide order dated 15.2.2018, this Court had stayed the payment of

compensation beyond Rs. 14 lacs. Interest, as granted by the ld. Tribunal is maintained @9% from the date of filing of claim petition till realization. Ratio of apportionment, and manner of disbursement of compensation as determined by the ld. Tribunal, remains unchanged.

10. Accordingly, in view of the discussion hereinabove, FAO-902-2018 filed by the Insurance Company is allowed in above terms; and cross-objections No.1-2019 filed by the claimants are dismissed.

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

13/04/2023 **(Nidhi Gupta)**
ps-I **Judge**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No