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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-8428-2017 (O&M)
Date of Decision : 29.05.2024

New India Assurance Company Ltd.Appellant(s)

VERSUS

Kasturi Devi And Ors.Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vinod Gupta, Advocate for the appellant.
Mr. A.S. Khinda, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. Challenge in the present appeal preferred by the appellant-insurance company is to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Kapurthala (hereinafter referred to as ‘Tribunal’) vide award dated 01.08.2017.
2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.
3. The Tribunal in the present case had awarded the following compensation :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.7,500/-
2	Annual Income	[Rs.7,500x12]=Rs.90,000/-
3	Deduction 1/3 rd	[Rs.90,000-30,000]=Rs.60,000/-
4	Multiplier - 18	[Rs.60,000x18]=Rs.10,80,000/-

5	Funeral expenses	Rs.5,000/-
7	Loss of love and affection	Rs.50,000/-
8	Total Compensation	Rs.11,35,000/- (Wrongly calculated as Rs.11,30,000/-)

4. Learned counsel for the appellant-insurance company would contend that the Tribunal has wrongly assessed the income of the deceased as Rs.7,500/- per month as the minimum wage prevailing at the time of the accident was Rs.5,600/- per month. It is further the contention of the learned counsel that deduction of 1/3rd has wrongly been applied whereas it ought to have been 50% keeping in view the fact that the deceased was a bachelor.

5. *Per contra*, the learned counsel for respondent No.1 has contended that this is a case where the amount of compensation would have to be reworked inasmuch as the deceased was working as a Mehendi expert and used to draw Mehendi art on the hands of girls/brides. It is further the contention of the learned counsel that PW3-Dushyant Kumar had specifically stated that the deceased was a Mehendi artist and that the minimum wage of a skilled worker at the relevant time was Rs.7,924/- per month. However, the income of the deceased has been assessed as Rs.7,500/- per month. It is further the contention of the learned counsel that no addition has been made towards future prospects which ought to have been 40% and that the amount awarded towards conventional heads and loss of consortium is also on the lower side as well and is also not in accordance with the law laid down by the Hon’ble Supreme Court. In support of his contentions, he has relied upon the judgments of the Hon’ble Supreme Court in the cases of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Company Limited**

vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130] and N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021(4) RCR (Civil) 642]. The learned counsel for respondent No.1 has further contended that even though no cross-objection or an appeal has been filed by the respondent No.1/claimant however, as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908, the Court has power to pass an order notwithstanding that an appeal or cross-objection has not been filed by the claimant/respondent.

6. I have heard the learned counsel for the parties.

7. In the present case the Tribunal has assessed the income of the deceased as Rs.7,500/- per month. PW1-Kasturi Devi, who is the mother of the deceased, deposed that the deceased was doing the work of Mehendi and he was a Mehendi expert and was earning Rs.25,000/- per month. PW3 had also stepped into the witness box and had stated that the deceased was working as a Mehendi artist. There is no reason to disbelieve the statements of the said witnesses. The minimum wage of a skilled worker prevailing at the time of the accident was Rs.7,924.75/- per month and hence no fault can be found with the income as assessed by the Tribunal i.e. Rs.7,500/- per month. The argument of the learned counsel for the appellant-insurance company that the deduction of 50% ought to have been applied is accepted inasmuch as the deceased was a bachelor and hence deduction to the extent of 50% would be applicable. In the present case, multiplier of 18 has rightly been applied by the Tribunal keeping in view the age of the deceased which was 22 years at the time of the accident as per the post-mortem report (Ex.P2).

8. It is trite that as per the provisions of Order 41 Rule 33 of the Code of Civil Procedure, 1908 the Court has power to pass an order notwithstanding that the claimant/respondent has not preferred any cross-objection or appeal. In view thereof, keeping in view the fact that no addition has been made towards future prospects as well as the amounts awarded towards conventional heads and under the head ‘loss of consortium’ is not as per the law laid down by the Hon’ble Supreme Court, the amount of compensation needs to be reworked out.

9. No addition has been made towards future prospects and hence as per the law laid down by the Hon’ble Supreme Court in the case of **Pranay Sethi** (supra), 40% addition is to be added towards future prospects. Further, the amounts awarded under the conventional heads as well as under the head ‘loss of consortium’ are not as per the law laid down by the Hon’ble Supreme Court in the cases of **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra) and hence, the claimant-respondent No.1 would be entitled to Rs.18,000/- (Rs.15,000+20% increase) towards loss of estate and Rs.18,000/- (Rs.15,000+20% increase) towards funeral expenses and the claimant-respondent No.1 (mother of the deceased) would also be entitled to Rs.48,000/- (Rs.40,000+20% increase) towards loss of consortium. Accordingly, the reworked compensation is as under :

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.7,500/-
2	Annual Income	[Rs.7,500x12]=Rs.90,000/-
3	Deduction 50%	[Rs.90,000-45,000]=Rs.45,000/-
4	Future Prospects - 40%	[Rs.45,000+18,000]=Rs.63,000/-

5	Multiplier - 18	[Rs.63,000x18]=Rs.11,34,000/-
6	Loss of estate	Rs.18,000/-
7	Funeral expenses	Rs.18,000/-
8	Loss of consortium (i) Filial	Rs.48,000/-)
	Total Compensation	Rs.12,18,000/-

9. The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till the realization of the entire amount.
10. In view of the above discussion, the present appeal is disposed off and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

29.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO