(2018) 08 P&H CK 0409

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1804 Of 2016, 3355 Of 2017

National Insurance Co. Ltd. APPELLANT

Vs

Sunita Devi & Others RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2018) 08 P&H CK 0409

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Pradeep Kumar, Shweta Nahata, Rajni

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J

1. This order shall dispose of FAO-1804-2016 (National Insurance Co. Ltd. Versus Sunita Devi & others) and FAO-3355-2017 (Sunita Devi & another Versus Darbar Singh & others) as both these connected appeals arise out of award dated 01.12.2015 rendered by the Motor Accident Claims Tribunal, SAS Nagar, Mohali.

2. It may be noticed that in a claim petition filed under Section 166 of the Motor Vehicle Act, 1988, the Tribunal has awarded a compensation amount of Rs.20,69,000/- along with interest at the rate of 6% per annum from the date of filing of the claim petition till realization in favour of the claimants who happen to be the parents of Mandeep @ Vicky and who died in a motor vehicle accident that took place on 06.01.2015.

3. FAO-1804-2016 has been preferred by the National Insurance Company Limited raising a plea that the compensation amount awarded is much on the higher side. FAO-3355-2017 has been preferred by the claimants seeking enhancement of compensation.

4. Since the only issue involved in these connected appeals is with regard to

quantum of compensation, this Court would be adverting to the findings recorded by the Tribunal as regards issue No.3 which had been framed in the following terms:

"Whether the claimants are entitled to receive compensation as prayed for, if so, to what extent and from whom?"

5. Mr. Pardeep Kumar, learned counsel representing the appellant/ Insurance Company in FAO-1804-2016 would contend that the monthly income of the deceased that has been assessed by the Tribunal at the rate of Rs.9000/- per month is on the higher side and based on mere surmises and conjectures. He contends that the monthly income ought to have been taken as Rs.6350/- per month i.e. the minimum wages admissible to an unskilled worker as per Notification issued by the Labour Department and applicable on the date of accident i.e. 06.01.2015. Further contended that the compensation amount awarded towards future prospects as also under the conventional heads is in violation of the parameters laid down by the Apex Court in National Insurance Company Limited Vs. Pranay Sethi &

6. Learned counsel representing the claimants/appellants in FAO-3355-2017 would argue that the deceased was working as a Mason and used to earn approximately Rs.550/- per day as wages and for proving such fact, one Satpal has been examined as PW3. On the basis of such evidence, it is contended that the monthly income of the deceased ought to have been taken as Rs.15,000/- per month at the very least. No other point has been urged.

7. Having heard counsel for the parties in these two connected appeals, this Court is of the considered view that the compensation amount awarded in favour of the claimants/appellants would require to be scaled down keeping in view the guidelines and parameters laid down by the Apex Court in Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77 and National Insurance Company Limited Vs. Pranay Sethi & others,2017 (4) RCR (Civil) 1009.

8. In the claim petition, claimants had asserted that deceased Mandeep @ Vicky was earning Rs.550/- per day as wages. To substantiate that the deceased was doing Masonry work, Satpal was examined as PW3. The Tribunal disbelieved the daily wages of Rs.550/- as had been claimed and proceeded on a presumption that the deceased Mandeep @ Vicky must be earning Rs.300/- per day and accordingly, assessed the monthly income at the rate of Rs.9000/- per month.

9. Concededly, the date of accident is 06.01.2015. Even though, the claimants did not lead any conclusive evidence to substantiate their plea as regards deceased earning Rs.550/- per day but there would be no basis to disbelieve the version set up on behalf of the claimants that he was working as a Mason. Keeping in view the date of accident, it can safely be taken that the deceased would have been earning atleast Rs.250/- per day as wages. Accordingly, it is directed that the monthly income of the deceased would be taken as Rs.7500/- per month instead of Rs.9000/- per month as taken by the Tribunal. The same is

so directed.

10. It would be seen that the Tribunal has completely overlooked the aspect as regards deduction from income of the deceased towards his living and personal expenses. Admittedly, Mandeep @ Vicky (Since deceased) was a bachelor. Accordingly, while applying the dictum laid down by the Apex Court in Sarla Verma's case (supra), a 50% deduction towards personal and living expenses of the deceased is directed.

11. No interference would be called for insofar as the multiplier of 18 that has been applied by the Tribunal keeping the age of the deceased as 20 years.

12. This Court finds that even increase in income towards future prospects awarded by the Tribunal @ 50% is on the higher side. It was the case of the claimants themselves that deceased Mandeep @ Vicky was self employed. In view of the above and keeping in view his age bracket, 40% increase in income towards future prospects is awarded as per guidelines furnished by the Apex Court in Pranay Sethi's case (supra).

13. This Court finds that even on conventional heads i.e. funeral expenses and loss of consortium, amount awarded is Rs.1,25,000/- which is on the higher side.

14. It was the claimant's own case that deceased Mandeep @ Vicky was unmarried. As such, amount towards loss of consortium cannot sustain.

By applying the dictum laid down by the Apex Court in Pranay Sethi's case (supra), an amount of Rs.30,000/- is awarded under the conventional heads towards loss of estate and funeral expenses i.e. Rs.15,000/- each.

15. In view of the discussion above, the revised compensation amount calculated and computed as follows:

Sr. No.

Computation/Head

Revised calculation

1.

Income Rs.7,500/-

40% increase towards future prospects i.e. 7500+3,000=10,500/-

2.

50% deduction towards personal and living expenses of the deceased

10,500 - 5250=5250/-

3.

Compensation after applying multiplier of 18

5250 x 12 = 63000/- 63,000 x 18 =11,34,000/-

4.

Conventional Heads i.e. funeral expenses and loss of estate.

Rs.30,000/- 11,34,000+30,000=11,64,000/-

5.

Total

Rs.11,64,000/-

16. FAO-1804-2016 at the hands of the appellant/Insurance Company is allowed in the aforesaid terms and FAO-3355-2017 at the hands of the claimants seeking enhancement is, accordingly, dismissed.