**(2019) 01 P&H CK 0299**

**In the Punjab And Haryana At Chandigarh**

**Case No :** First Appeal Order No. 7228, 7407 Of 2015 (O&M)

New India Assurance Company Limited — APPELLANT

Vs

Sarla And Others — RESPONDENT

**Date of Decision :** 07-01-2019

**Acts Referred:**

**Citation :** (2019) 01 P&H CK 0299

**Hon'ble Judges :** Surinder Gupta, J

**Bench :** Single Bench

**Advocate :** Suvir Dewan, Ashok Jindal, Anhad S. Miglani, Abhilaksh Grover, Nitish Garg

**Final Decision :** One Appeal Allowed & Other Appeal Dismissed

# Judgement

Surinder Gupta, J

The above captioned two appeals have been filed by New India Assurance Company Limited and claimants Sarla and others against the award dated 02.07.2015. While the insurance company is challenging the quantum of compensation, the claimants are seeking its enhancement as per the law settled by Hon'ble Apex Court in case of National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009.

So far as the grant of compensation as per the law settled in above referred case is concerned, the same is not disputed by the learned counsel for the parties.

The tribunal allowed the compensation of Rs. 19,70,000/- to the claimants, which was computed as follows:-

(i)

Name of the deceased

Prem Pandey

(ii)

Profession of deceased

Driver

(iii)

Age of the deceased

38 years

(iv)

Income of the deceased assessed by the

Rs. 12000 p.m.

tribunal on the basis of salary certificate

Ex.C1

(v)

Deduction towards personal expenses

Rs. 12000-3000=Rs. 9000 p.m.

1/3rd (in fact 1/4th deduction was taken)

i.e. Rs. 108000 p.a.

(vi)

Multiplier applied 15

Rs. 108000X15 = Rs. 1620000

(vii)

Funeral expenses

Rs. 25000

(viii)

General damages

Rs. 25000

(ix)

Loss of estate

Rs. 100000

(x)

Loss of consortium

Rs. 100000

(xi)

Loss of love and affection

Rs. 100000

Total

Rs. 19,70,000/-

Learned counsel for the insurance company has argued that the minimum wages for the skilled worker as on 01.03.2013 was Rs. 7,372/- per month. The accident took place on 27.02.2013, as such, the tribunal has committed error in assessing monthly income of the deceased as Rs. 12,000/-per month instead of taking minimum wages prescribed by the State of Punjab for skilled workers.

Learned counsel for the claimants has argued that claimants proved on file salary certificate of the deceased as Ex.C1 as per which, the deceased was drawing a salary of Rs. 12,000/- per month at the time of accident.

In order to prove the income of the deceased, the claimants have examined owner of the vehicle, which the deceased was driving at the time of accident. He has stated in his affidavit that deceased was employed by him and he was paying him salary of Rs. 12000/- per month. He, however, could not produce any document regarding the employment or payment of salary to the deceased. The tribunal, while assessing income of the deceased, has observed that the driver could earn Rs. 12,000/- per month. However, it has not given any reason for making the above observation. The tribunal has also observed that "in this case, salary has been duly proved and when there have been no denial, income of the deceased is to be taken as admitted." This observation of the tribunal is also without any basis as even in the cross-examination of CW1, he was asked to produce any document regarding the employment and salary of the deceased, which he could not produce and respondent insurance company has contested the plea of claimants qua monthly income of deceased.

Though, no documentary evidence regarding employment and payment of salary to the deceased has come on record, still the testimony of CW1 Rakesh Kumar cannot be discarded to the effect that deceased was employed by him as driver. Even in his cross-examination, a suggestion was given to him that he (CW1 Rakesh Kumar) was using his Innova vehicle as taxi, which signifies that insurance company is virtually admitting the employment of deceased as driver of CW1 Rakesh Kumar. In these circumstances, minimum wages prescribed by the State Government for the skilled workers cannot be taken as wages for assessing the income of the deceased, who was driver by profession. The accident had taken place in the year 2013 and keeping in view the facts, evidence on file and statement of Rakesh Kumar CW1, I am of the view that income of the deceased should be taken as Rs. 10,000/- per month.

Learned counsel for the insurance company submits that under the conventional heads, the tribunal has allowed a compensation of Rs. 3,50,000/-, which is to be restricted to Rs. 70,000/- per month as per the law laid down by Hon'ble Apex Court in case of National Insurance Company

Limited Vs. Pranay Sethi and others (supra). His plea has not been contested by learned counsel for claimants.

In view of the above, the amount of compensation to which the claimants are entitled to, is reassessed as follows:-

Sl.No.

Heads

Calculation

(i)

Income of the deceased

Rs. 10000 per month

(ii)

40% of above (i) to be added as future prospects

(Rs. 10000+Rs. 4000)=

Rs. 14000 per month

(iii)

Deduction of 1/4th towards personal expenses of

(Rs. 14000-Rs. 3500)=

the deceased

Rs. 10500 per month

(iv)

Compensation after multiplier of 15 is applied

(Rs. 10500X12X15)=

Rs. 1890000

(v)

Loss of consortium

Rs. 40000

(vi)

 

Loss of estate

Rs. 15000

(vii)

Funeral expenses

Rs. 15000

Total

Rs. 19,60,000/-

As a sequel of my above discussion, appeal filed by insurance company (FAO-7228-2015) is partly allowed and appeal filed by the claimants (FAO-7407-2015) is dismissed. The amount of compensation awarded to the claimants is reduced from Rs. 19,70,000/- to Rs. 19,60,000/-. The insurance company is entitled to recover the excess amount, if already paid, from the claimants. Keeping in view facts and circumstances of the case, parties are left to bear their own costs.