IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3957 of 2002 (O&M)
Date of Decision: January 15, 2015

Sanjay ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3958 of 2002 (O&M)

Kashmir Singh ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3959 of 2002 (O&M)

Pardeep ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3960 of 2002 (O&M)

Angrejo ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3961 of 2002 (O&M)

Rajbir Singh and another ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3962 of 2002 (O&M)

Ranbir Singh and others
..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3963 of 2002 (O&M)

Patori Devi and another
..Appellant(s)

Versus

Subhash and others ...Respondent(s)

with

FAO No.3964 of 2002 (O&M)

Raj Bala and others ..Appellant(s)

Versus

Subhash and others ...Respondent(s)

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CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

Present: Mr. Kulvir Narwal, Advocate
for the appellant(s).

Mr. Ashwani Talwar, Advocate
for respondent no.3-Oriental Insurance Co. Ltd.

Mr. Rakesh Dhiman, Advocate.
for the respondent no.4-Kharman Co-Op. Society.

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ANITA CHAUDHRY, J.

1. These are eight appeals arising out of the award dated 20.04.2002, passed by the Motor Accident Claims Tribunal, Rohtak (here-in-after referred to as the Tribunal).

2. Narrating the broad facts first, necessary for disposal of the appeals. Several passengers were traveling in a bus bearing registration no. HR-46-9583, which was being driven by Zora Singh. When the bus reached near the card board factory, in the area of village Bhaini Maharajpur, another bus bearing registration no. HR-46-4327 came from the opposite side and rammed into the bus in which the passengers were travelling. All the occupants of the bus suffered injuries. Zora Singh driver and some others died in the accident while the others were injured. An FIR was registered at Police Station Sadar Rohtak on the same day.

3. The Tribunal separately examined each case and allowed the compensation to various claimants who are aggrieved and have filed these appeals.

6. I have heard learned counsel for both the parties. For the sake of convenience, the facts of the cases shall be taken up individually.

FAO-3957-2002 titled as Sanjay Vs. Subhash and others

7. A claim petition was filed by Sanjay son of Azad Singh, relating to the injuries suffered by him. The claimant-appellant had pleaded that he had suffered multiple injuries and visited the hospital for over three months. He was a mason and was earning Rs.5,000/- per month and had become crippled for life. The Tribunal noted that MLR or x-ray report had not been placed on

record and the only document was the discharge card Ex.P12 which showed that the injured remained in the hospital from 22.06.1998 to 05.07.1998 but no evidence to show the injuries. The Tribunal also noted that no medical officer had been examined. It noted that at times the claimants do not keep the bills. It was also noted that there was no disability certificate. Bills of a value of Rs.11,000/- were produced and were considered and the Tribunal awarded a consolidated amount of Rs.15,000/-.

8. The submission on behalf of the appellant was that the claimant had remained admitted in the hospital for a fortnight and a plate was inserted in the left arm and only a sum of Rs.15,000/- was awarded and when the bills were of the value of Rs.11,000/- and separate amount should have been awarded for the attendant, special diet and pain and suffering.

The submission on the other hand was that there was no disability and the appellant had not examined any doctor and the appellant had withheld the MLR and he was not entitled to any enhancement.

9. The Tribunal had made a detailed examination of the material that was produced by the appellant in para nos.36 to 38 of the judgment and had noted with pain that the claimant had been extremely careless in leading evidence. The claimant had failed to deposit the expenses to summon the doctor and the doctor present in the Court in some other case was asked by the Tribunal to find out if there was any disability and the case had been adjourned number of times to enable the appellant to give material but he failed to lead any evidence or show that there was

any disability.

10. The Tribunal had noted that the appellant had remained in the hospital for about a fortnight. It had considered the bills and had allowed Rs.4,000/- over and above the bills. Considering the fact that there is no evidence to evaluate the compensation, I would add Rs.5,000/- for the attendant. A sum of Rs.5,000/- is added towards special diet, a sum of Rs.5,000/- is added for pain and suffering and a sum of Rs.2,000/- is added for transportation charges. Thus making an addition of Rs.17,000/-, which will be paid to the claimant within a period of two months, failing which he would be entitled to interest at the rate of 6% from the date of filing the appeal till realization.

The appeal (FAO-3957-2002) is partly allowed.

FAO-3958-2002 titled as Kashmir Singh Vs. Subhash and others

11. The submission made on behalf of the appellant was that Kashmir Singh had suffered a compound fracture on the right leg and he had spent Rs.60,000/- on his treatment and he had been retired pre-maturely by Haryana Roadways Department and was getting pension and there was a disability of 7% and the Tribunal had only awarded Rs.20,000/- for the disability and Rs.7,000/- for special diet when it was a case of shortening of leg and no separate amount had been awarded for transportation or loss of salary for the earned leave and appropriate enhancement be given.

The submission on the other hand was that the disability was just 7% of a particular limb and functional disability would not be more than 2 to 3% and the appellant had not produced the bills or the OPD card and these aspects were considered by the Tribunal.

12. While calculating loss on account of disability, the Courts have been using the multiplier method. Though, the Tribunal has awarded Rs.20,000/- as compensation for the disability but the award does not reflect that the multiplier was applied to calculate the loss. For assessing the compensation for the disability, the functional loss has to be seen and I find that the disability was on account of stiffness and malunion of the fracture of both bones of the right leg and shortening of the lower limb and the disability could not be more than 2 to 3% of the whole body. Even if the income is taken as Rs.7,000/- per month, the loss per year would not be more than Rs.1,700/- and applying the multiplier of 11, the compensation would still be less than Rs.20,000/-. Therefore, I make no change in the award for future loss on account of disability. However, I would add the following:-

Loss on account of earned leave	-	Rs.30,000/-
Attendant charges	-	Rs.10,000/-
Special diet	-	Rs.5,000/-
Transportation charges	-	Rs.5,000/-

The total of the above comes to Rs.50,000/-. It is held that the appellant Kashmir Singh is entitled to Rs.50,000/- more which will be paid within two months, failing which the appellant would be entitled to interest @ 6% from the date of filing of the appeal till realization.

The appeal (FAO-3958-2002) is also partly allowed.

FAO-3959-2002 titled as Pardeep Vs. Subhash and others

13. The submission made on behalf of the appellant in this appeal was that Pardeep was 7 years old and was hospitalized for 22 days and had become medically deranged and disability certificate had been placed on record to show that Pardeep was suffering from permanent disability on account of loss of IQ and he would have to be dependent on the family through out his life and cannot be left alone and the amount awarded was inadequate. The submission of the appellant was that a notional income of Rs.15,000/- should have been taken and multiplier should have been applied to assess the loss.

The submission on the other hand was that it is unfortunate that the child had to suffer but no MLR, x-ray report or medical bills were produced and the only material was the disability certificate.

14. A perusal of para nos.48 to 50 of the award shows that the Tribunal had noted that the child had become low in IQ after the accident and there was disability to the extent of 75%. No medical bills were placed on record and the Tribunal had noted that the child was being treated in PGI, Rohtak which is Government run institute where treatment and medicines were free of cost. The child had been victim of an accident which left him disabled to the extent of 75%. His IQ level was found to be too low. The child was treated in PGI, Rohtak. Though, the admission in the hospital was for about three weeks but the accident left him disabled for life.

In the case of death of a child, the Courts have been taking a notional income of Rs.15,000/- per annum and have been applying the multiplier of 15 to calculate the compensation but here is a child who is alive and would have to remain dependent upon his family for all his needs throughout his life. No amount of money can compensate the parents. The child will have to be brought up with special care leading to additional expenses. The child would require an attendant through out his life. The compensation for such children is a difficult proposition, therefore, I would award a lump sum amount of Rs.7,50,000/-. The amount awarded by the Tribunal i.e. Rs.2,00,000/- would be deducted and the remaining amount would be deposited in the fixed deposit so that it can fetch monthly interest. The appellant would also be entitled to interest from the date of filing of the appeal till the deposit is actually made.

The appeal (FAO-3959-2002) is allowed.

FAO-3960-2002 titled as Angrejo Vs. Subhash and others

15. The submission made on behalf of the appellant was that Angrejo had suffered 15% permanent disability on account of malunion and shortening of leg by half inch and she is unable to squat or sit cross-legged and the Tribunal had awarded Rs.55,000/- for all the heads. It was urged that the claimant was a labourer and she was earning Rs.90/- per day and the amount awarded was too meager. It was urged that the appellant was entitled to separate amount for special diet, transportation and for pain and suffering.

The submission on the other hand was that the appellant was treated in PGI, Rohtak which takes care of all the medical expenses and there was no evidence that she was working and the accident occurred in 1998 and even if notional figure as income is assumed which could not be more than Rs.2,000/- per month and adequate compensation has been allowed. It was urged that there was no evidence regarding the amount spent on the treatment and the Tribunal had awarded Rs.5,000/- as compensation assuming that there would be some expenses.

16. The appellant was just 27 years old when she met with the accident. She was treated at PGI, Rohtak where the treatment is free. No medical bills were produced. Her stay in the hospital was only for a day as P.O.P. cost was applied and she was discharged from hospital, the same evening. The Tribunal had noted this fact. The appellant had suffered a compound fracture on both the bones of the left leg. The disability certificate shows that there was 15% disability. Even if it is assumed that it was functional disability as there was shortening of leg and taking Rs.2,000/- as the notional income, the compensation after applying the multiplier of 18 would be 2000x15/100x18= Rs.64,800/- which is rounded off to Rs.65,000/-. A sum of Rs.5,000/- is added as attendant charges. A sum of Rs.5,000/- is added for special diet, a sum of Rs.5,000/- is added for transportation charges and a sum of Rs.15,000/- is added for pain and suffering, making the total to be Rs.95,000/-. The Tribunal had allowed Rs.55,000/-, which would be deducted and the appellant is allowed an addition of Rs.40,000/- which would be paid within two months, failing which the appellant would be entitled to interest @ 6% from the date of filing of the appeal till

realization.

The appeal (FAO-3960-2002) is partly allowed.

FAO-3961-2002 titled as Rajbir Singh and another Vs. Subhash and others

17. The counsel for the appellants had urged that the parents had filed this appeal seeking compensation for the death of their son Sanjay who was a student of 4^{th} class and was 10 years old and the lump sum amount of Rs.60,000/- was a meagre amount and notional figure should have been assumed as income and multiplier of 15 should have been applied.

On the other hand, the counsel representing the insurance company supported the judgment and urged that for death of such a small child, a lump sum amount is being paid as compensation.

18. In the case of death of a child, the actual extent of pecuniary loss cannot be ascertained but if the appellants provide some data then some estimate can be formed but even then it would be partly on conjectures. The general principle is that the pecuniary loss can be ascertained only by balancing on one hand the loss to the claimants of the future pecuniary benefit and on the other hand the balance of loss and gain to a dependent. Their Lordships of the Hon'ble Supreme Court in 1956 took a conventional figure for awarding compensation for death of children. In the case of ***Lata Wadhwa and others Vs. State of Bihar and others*** 2001 AIR 3218 (SC), the Hon'ble Apex Court awarded a compensation of Rs.2,00,000/- to the parents in the case of death of children between the age group of 5 to 10 years.

After the decision of Lata Wadhwa's case (supra), the Delhi High Court assumed the annual notional income at Rs.15,000/- and applied the multiplier of 15, which was approved by the Hon'le Apex Court. I would adopt the same measure and assuming the notional income to be Rs.15,000/- per annum and applying the multiplier of 15, the compensation would work out to Rs.2,25,000/-. To this a sum of Rs.50,000/- should be added for the miscellaneous heads including pain and suffering and funeral expenses; making the total to be Rs.2,75,000/-. The Tribunal had awarded Rs.60,000/- which shall be deducted and the remaining amount of Rs.2,15,000/- would be paid to the appellants within two months, failing which the appellants would be entitled to interest @ 6% from the date of filing of the appeal till realization.

The appeal (FAO-3961-2002) is allowed.

FAO-3962-2002 titled as Ranbir Singh & Ors. V. Subhash & Ors.

19. The submission on behalf of the appellants was that Rajo Devi was 30 years old and she had left behind six minor children and her husband and she was a labourer and was earning Rs.3,000/- per month and her income was assessed at Rs.500/- per month and no amount was awarded for funeral expenses and in the year 1998, the minimum wages were around Rs.2,000/- per month and the services which the mother or the wife renders are invaluable which cannot be compensated and no deduction should be made as that is not the income which she actually earns.

The submission on behalf of the insurance company was that the claimants had pleaded that the deceased was a labourer but no evidence was led and the Tribunal had noted that she might be a maid-servant and her income was rightly assessed at Rs.500/- per month as the assessment was made in 1998.

20. The services rendered by a mother/house-wife are invaluable. Considering the year of the accident, I would assume the value of his services at Rs.2,000/- per month. Adopting the multiplier of 17, the compensation would come to Rs.4,08,000/-. To this, a sum of Rs.2,500/- should be added as funeral expenses and a sum of Rs.2,500/- is added as loss of estate. The Tribunal had already allowed Rs.10,000/- on account of loss of consortium. The total figure thus comes to Rs.4,13,000/-. A sum of Rs.5,000/- is added on account of loss of love and affection; making the total to be Rs.4,18,000/-. The Tribunal had allowed Rs.1,00,000/- which shall be deducted and the remaining amount of Rs.3,18,000/- would be paid within two months to the appellants, failing which they would be entitled to interest @ 6% from the date of filing of the appeal, till realization. The amount would be shared by all the claimants in same ratio as allowed by the Tribunal

The appeal (FAO-3962-2002) is partly allowed.

FAO-3963-2002 titled as Patori Devi and another Vs. Subhash and others

21. The submission made on behalf of the appellant was that Gandhi Ram was 55 years old and was survived by his wife and seven children and were allowed Rs.70,000/- only as compensation and the Tribunal had failed to assess the income and had considered him to be 60 years old and his income has to be first fixed and then multiplier has to be applied to arrive at the compensation.

The submission on the other hand was that the number of claimants was purposely increased and the Tribunal had noted that six children were married and only the wife and one minor child were dependent and the postmortem report showed that deceased was 60 years old and there was no evidence regarding his income and therefore, a lump sum amount was awarded.

22. Even it is assumed that Gandhi Ram was 60 years old, the Tribunal should have assessed his income, since the accident had taken place in 1998. I would take the income to be Rs.2,100/- per month and considering the fact that there were only two dependants i.e. minor child and the wife, deduction of 1/3rd is being made and the amount available for the family would be Rs.1,400/- per month and the annual contribution would come to Rs.16,800/-, applying the multiplier of 9, the compensation would come to Rs.1,51,200/-. To this, a sum of Rs.2,500/- is added for funeral expenses, a sum of Rs.5,000/- is added for loss of consortium, a sum of Rs.5,000/- is added for loss of love and affection, raising the total to Rs.1,63,700/-. A sum of Rs.70,000/- allowed by the Tribunal is deducted and the remaining amount of Rs.93,700/- is allowed to the widow and minor child, which would be shared equally. The amount shall be paid within two months, failing which they would be entitled to interest @ 6% from the date of filing of appeal, till realization

The appeal (FAO-3963-2002) is partly allowed.

FAO-3964-2002 titled as Raj Bala and others Vs. Subhash and others

23. The submission on behalf of the appellants was that

Zora Singh was a driver with Co-operative Society and was getting salary of Rs.3,000/- per month besides T.A. but his salary was taken to be Rs.2,000/- per month and deduction of 1/3rd was made and compensation of Rs.2,49,600/- was awarded which is on the lower side. It was urged that no amount towards funeral expenses, loss of consortium and for love and affection of the children have been granted.

On the other hand, it was urged that if the income is taken at the minimum wage level then there should be an addition towards future prospects.

24. No evidence was led to show that Zora Singh was a driver with any Co-operative Society or he was getting Rs.3,000/- as salary. The Tribunal had dealt with the issue in para no.22 of the award and had noted that during those days, the drivers of heavy vehicles were getting salary between Rs.1500/- to Rs.2,000/- and had taken the income to be Rs.2,000/- per month. I would take the income of the deceased as Rs.2,100/- and would add 30% towards future increase and the total income would come to Rs.2,730/- per month. Making a deduction of 1/4th, the income available for the family would be Rs.2,048/- per month and the annual contribution would come to Rs.24,576/- and after applying the multiplier of 17, the compensation would come to Rs.4,17,792/-. To this, a sum of Rs.5,000/- should be added as loss of consortium, a sum of Rs.5,000/- is added for loss of love and affection for the children and a sum of Rs.2,500/- is added towards funeral expenses; raising the total to be Rs.4,30,292/-. Out of this amount, a sum of Rs.2,49,600/- awarded by the

Tribunal would be deducted and the balance amount of Rs.1,80,692/- shall be paid to the claimants within two months, failing which they would be entitled to interest @ 6% from the date of filing of appeal, till realization

The appeal (FAO-3964-2002) is partly allowed.

All the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

January 15, 2015
sunil