IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Date of Decision: *February 25, 2015*

1. **FAO No.2795 of 2013 (O & M)**

Bharti AXA General Insurance Company Limited

..... APPELLANT

VERSUS

Amarjeet Kaur & others

..... RESPONDENTS

. . .

2. **FAO No.2796 of 2013 (O & M)**

Bharti AXA General Insurance Company Limited

..... APPELLANT

VERSUS

Gurmeet Singh & others

..... RESPONDENTS

. . .

3. **FAO No.5835 of 2013 (O & M)**

Gurmeet Singh & others

..... APPELLANT

VERSUS

Nirmal Singh & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Rajbir Singh, Advocate, for Mr. Sanjeev Goel, Advocate, for the appellant – Insurance Company.

Mr. Ashit Malik, Advocate, for respondent Nos.1 and 2 – claimants.

Mr. Rahul Jain, Advocate, for Mr. Kuldeep Tiwari, Advocate, for respondent Nos.3 and 4 – driver & owner of offending vehicle.

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Jaspal Singh, J

1. By this common judgment, this Court intends to dispose of three appeals bearing FAO No.2795 of 2013, FAO No.2796 of 2013 and FAO No.5835 of 2013 being outcome of one and same award dated May 01, 2013 passed by the Motor Accident Claims Tribunal, Kurukshetra (for brevity, 'Tribunal').

2. FAO Nos.2795 and 2796 of 2013 have been preferred by Bharti AXA General Insurance Company Limited (for short, 'Insurance Company') challenging the quantum of compensation awarded on account of death Jaspreet Singh @ Jasanpreet Singh @ Jassa, aged about 7 years and Paramjeet Kaur, occurred in a vehicular accident on July 07, 2012 at Ambala Road, Pehowa, allegedly due to rash and negligent driving of Truck No.PB-11AS-8980 by Nirmal Singh (respondent No.1 in the claim petition). Through FAO No.5835

of 2013, Gurmeet Singh & others have sought enhancement of compensation awarded by the learned Tribunal on account of the death of Paramjit Kaur.

3. While assailing the impugned award in connection with death of Jaspreet Singh @ Jasanpreet Singh @ Jassa, it has been vehemently argued by learned counsel for the appellant – Insurance Company that learned Tribunal while deciding claim petition, preferred under the provisions of Motor Vehicles Act, 1988 (for short, 'Act'), has awarded a sum of ₹ 7,26,000/- as total compensation. The amount of compensation so awarded by the Tribunal is highly excessive, contrary to the settled law as well as evidence available on file. There is no basis for assessing the income of deceased which has been determined to the tune of ₹ 6,050/- per month keeping in view the income of father of the deceased. There is no such provision in the Act. Moreover, learned Tribunal has also lost sight of the fact that Jaspreet Singh @ Jasanpreet Singh @ Jassa was 7 years of age, as per Birth Certificate Ex.P9, at the time of his death in accident. Learned Tribunal further made a deduction of 50% and thus, took annual income of minor deceased @ ₹ 36,300/- and applied multiplier of 20. The finding recorded by learned Tribunal in this regard is highly perverse and income of minor is

to be taken only @ ₹ 15,000/- per annum as per Second Schedule of the Act. The dependency of the parents is to be taken to a sum of ₹ 10,000/- per annum after deducting 1/3rd and multiplier of 15 is to be applied in case the age of deceased is between 10-15 years. In this regard, learned counsel has referred to observations made in case R.K. Malik & another Vs. Kiran Pal & others, *2009(14) SCC 1.*

4. While relying upon another judgment in Santosh Rani vs. Ranjit Singh, *2008 ACJ 1405*, it has been submitted by learned counsel for the appellant – Insurance Company that a sum of ₹ 2,50,000/- was awarded in case of a minor of 13 years but in the case in hand, compensation to the tune of ₹ 7,26,000/- has been awarded which is contrary to the law laid down by the Hon'ble Supreme Court as well as against the provisions of the Act.

5. While challenging the compensation awarded by learned Tribunal on account of death of Paramjeet Kaur wife of Gurmeet Singh, it has been contended by learned counsel for the appellant – Insurance Company that income of the household lady has been assessed to the tune of ₹ 7,000/- per month which is on a higher side and contrary to the settled proposition of law. Infact, there is no proof of income being earned by deceased

Paramjeet Kaur. At the most, services rendered by house maker can be assessed to the tune of ₹ 3,000/- per month. So, amount awarded is higher, excessive, exorbitant and without any basis. The learned Tribunal has also lost sight of the fact that the claimant himself relied upon the judgment passed in Arun Kumar Agarwal & another vs. National Insurance Company & others, *2010(3) RCR (Civil) 827 (SC)* in which 1/3rd income of husband of deceased was taken as monthly income of the house-wife and if the same ratio is applied in the present case, compensation works out to ₹ 4,20,000/- i.e. 28000 X 15 as the husband of deceased, namely, Gurmeet Singh was getting ₹ 7,000/- as pension as established on record. Thus, compensation awarded by the Tribunal on account of death of Jaspreet Singh @ Jasanpreet Singh @ Jassa as well as Paramjeet Kaur deserves to be decreased.

6. On the other hand, learned counsel for respondents – claimants has controverted the submissions made by learned counsel for Insurance Company contending that amount of compensation awarded on account of death of Paramjeet Kaur is rather on lower side and deserves to be enhanced. However, compensation awarded on account of death of minor Jaspreet Singh @ Jasanpreet Singh @ Jassa is well

justified, factually as well legally. It does not call for any interference by this Court.

7. It has further been stressed by learned counsel for claimants that amount awarded on account of death of Paramjeet Kaur cannot be termed to be "just and fair" compensation. The gratuitous services rendered by the wife with true love and affection to her husband and children and managing the household affairs cannot be equated with services rendered by other family members. Wife is in the constant attendant of family throughout the day and night. Amount of compensation, thus, deserves to be enhanced suitably.

8. Having heard the learned counsel for the parties, analyzing the award & evidence and bestowing deep consideration to the aforesaid rival submissions made by learned counsel for parties, this Court finds that impugned award requires indulgence of this Court in the quantum of compensation which deserves modification.

9. Firstly, taking up the quantum of compensation awarded on account of death of Jaspreet Singh @ Jasanpreet Singh @ Jassa, aged about 7 years, this Court is of the considered view that same is on higher side. There is no

provision in the Act to assess income of minor on the basis of income of father deceased minor.

10. Undoubtedly, compensation in law is to be paid to restore the person who has suffered damage or loss in the same position, if the tortuous act or breach of contract had not been committed. But, problem to assess the quantum of compensation crops up in case of death of a minor child as he/she cannot be expected to earn anything at the time of unnatural death in accident. In case of a non-earning person, under Second Schedule of the Act, his income has been notionally estimated @ ₹ 15,000/- per month. No doubt, Second Schedule is applicable to the claim petition(s) preferred under Section 163A of the Act. The said Schedule provides a multiplier of 15 upto the age of 15 years. In R.K. Malik's case (supra), Hon'ble Apex Court observed that even when compensation is payable under Section 166 read with Section 168 of the Act, deviation from the structured formula as provided in the Second Schedule is not ordinarily permissible but except in exceptional cases. While making these observations, Hon'ble Supreme Court relied upon the previous judgments in Abati Bezbaruah v. Dy. Director General, Geological Survey of India, *(2003)3 SCC 148*; United India

Insurance Company Ltd. v. Patricia Jean Mahajan, *2002(3) RCR (Civil) 534*; and UP State Road Transport Corp. v. Trilok Chandra, *1996(2) RRR 718*.

11. Adverting to the facts of the case in hand, deceased Jaspreet Singh @ Jasanpreet Singh @ Jassa was aged about 7 years and in view of observations referred to above, notional income provided in the Second Schedule and multiplier specified therein can be made the basis for pecuniary compensation for the loss of dependency in the instant case. Thus, taking into consideration the Second Schedule, compensation on account of death of minor works out to ₹ 2,25,000/- i.e. 15000 X 15. In addition to it, claimants Amarjeet Kaur and Nanak Singh being parents of deceased Jaspreet Singh @ Jasanpreet Singh @ Jassa are also entitled to a sum of ₹ 1 lac on account of loss of love and affection plus a sum of ₹ 25,000/- on account of funeral expenses i.e. totaling ₹ 3,50,000/- and not a sum of ₹ 7,26,000/- which has been awarded by the learned Tribunal.

12. Now, coming to the quantum of compensation awarded to claimants – Gurmeet Singh & others on account of death of Paramjeet Kaur. The learned Tribunal has assessed income of Paramjeet Kaur, a house-maker or house-wife, to the

tune of ₹ 7,000/- per month which, as per contention of learned counsel for the Insurance Company, is on a higher side. It is well settled proposition of law that while assessing the services of a house-wife, narrow meaning should not be given to the services rendered by her and it should be construed broadly. She is a full time working house-wife who works 24 hours a day. She is a Mom, a Wife, a Daughter and a Daughter – in – law. She is an alarm clock, a cook, a maid, a teacher, a waitress, a nurse, a nanny, a counselor and a comforter. She does not get holidays, medical leave and works throughout the day and night. Taking into consideration such services rendered by a housewife, assessment of a sum of ₹ 7,000/- per month by the learned Tribunal cannot be termed to be on higher side. Since, she was in age group of 35/40 at the time of her death in accident, multiplier of 15 has also been rightly applied by learned Tribunal. However, learned Tribunal has failed to appreciate that claimants – dependents of deceased were also entitled to compensation on account of loss of consortium to the tune of ₹ 1 lac as well as an amount of ₹ 25,000/- on account of funeral expenses. As per latest prevailing law, claimants are legally entitled to the above said amount. Amount already awarded by learned Tribunal i.e. ₹ 12,75,000/-, on account of death of Paramjeet Kaur stands enhanced by a sum of ₹ 1,25,000/- which shall be payable by the Insurance Company.

13. As an offshoot of the aforesaid discussion, FAO No.2795 of 2013 captioned as 'Bharti AXA General Insurance Company Limited vs. Amarjeet Kaur & others' preferred by the Insurance Company is partly allowed and the amount of compensation awarded by learned Tribunal to the tune of ₹ 7,26,000/- stands decreased to a sum of ₹ 3,50,000/-, though, alongwith interest @ 6% from the date of claim petition till its actual payment.

14. Similarly, FAO No.5835 of 2013 captioned as 'Gurmeet Singh & others vs. Nirmal Singh & others' is also partly allowed and amount of compensation awarded by learned Tribunal i.e. ₹ 12,75,000/-, stands enhanced by ₹ 1,25,000/-. Appellant No.1 – claimant shall be entitled to enhanced amount of ₹ 1,25,000/- which shall be payable by the Insurance Company within a period of 45 days from the date of receipt of certified copy of the judgment. In case, enhanced amount is not paid within the stipulated period of 45 days, claimants – Gurmeet Singh & others shall be entitled to interest @ 6% per annum from the date of original claim petition. As a consequence of the part acceptance of FAO No.5835 of 2013,

FAO No.2796 of 2013 preferred by the Insurance Company also stands disposed of.

15. No order as to costs.

(Jaspal Singh)
Judge

February 25, 2015
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