IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4345 of 2013 (O&M)
Date of Decision: January 09, 2015

The Oriental Insurance Co. Ltd. ..Appellant(s)

Versus

Master Dikshit and others ...Respondent(s)

with

FAO No.5237 of 2013 (O&M)

Master Dikshit and others

..Appellant(s)

Versus

Jungsher Khan and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

Present: Mr. Pawan Attri , Advocate for
Mr. Ashit Malik, Advocate
for the appellants (in FAO No.5237 of 2013) and
for respondents no.1 to 5(in FAO No.4345 of 2013).

Mr. Raj Kumar Bashamboo, Advocate
for the appellant (in FAO No.4345 of 2013) and
for respondent no.3(in FAO No.5237 of 2013).

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<u>ANITA CHAUDHRY, J.</u>

1. These are two appeals; one preferred by the insurance company and other by the claimants against the

award dated 16.05.2013, passed by the Motor Accident Claims Tribunal, Karnal (here-in-after referred to as the Tribunal), who allowed the claim petition and awarded compensation of Rs.8,85,180/- with interest. One appeal is by the insurance company seeking modification while the appeal filed by the claimants seek enhancement.

2. An accident took place on 03.06.2010, in which Jasmer Singh died. The claimants had pleaded that he was a diploma holder and an electrician and was employed in UHBVNL and was drawing salary of Rs.4,500/- per month and was also running a milk dairy from which he was earning Rs.25,000/- per month. The Tribunal examined the evidence and found that the deceased was on daily wages as per D.C. rate and was getting fixed salary of Rs.4,405/- per month and considered the salary and allowed an increase of 30% towards future prospects and applying the multiplier of 17, calculated the loss to be Rs.8,76,180/-. Besides this, a sum of Rs.2,000/- was awarded as funeral expenses, Rs.2,000/- as loss of love and affection and Rs.5,000/- was added on the heads of loss of consortium.

3. The submission made on behalf of Oriental Insurance Company is that the future increase should not have been given and the matter was still under consideration with the Hon'ble Apex Court and the calculations be made again.

4. Per contra, the submission made on behalf of the claimants was that the deceased was 28 years old and as per Reshma Kumari's case, an addition of 50% should have been made. It was contended that the income was not correctly taken and the deceased had income from milk dairy and he was posted as ALM and evidence was led to show that the ALM was getting salary of more than Rs.16,000/- per month. It was urged that the income-tax returns had been filed prior to the death which was not taken into account.

5. The counsel appearing for the Oriental Insurance Company responding to the arguments had urged that in Karnal, it had been noted that before the closing, tax returns are filed which are later used to claim higher compensation and it can be seen that the tax returns of previous years had also been filed on the same date and there is no evidence that the deceased had business income. It was contended that the income of a regular employee was not being paid to the deceased, therefore, evidence of PW-3 was rightly rejected by the Tribunal.

6. The Tribunal had examined Ashok Kumar, L.D.C. (PW-3) who had brought the record. The deceased was not a regular employee but a daily wager and his salary statement (Ex.PW2/A) gives the details of the wages which he was getting each month which was dependent upon number of working days. All the aspects have been examined by the

Tribunal and there is no reason to take a different view. The income-tax return was rightly rejected as no 'PAN Number' was found on the computation sheets. No tax was being paid either. The claimants had failed to lead evidence to show that the deceased was running a milk dairy. Therefore, the income was rightly taken at Rs.4,405/- per month. The Tribunal had allowed an increase of 30%, which too again does not need to be interfered with. The Hon'ble Apex Court in ***Savita Vs. Binder Singh***, Civil Appeal No.4401/2014, decided on 25.03.2014, had added 30% towards future prospects where the deceased was only 26 years old. Therefore, I would make no change in the addition allowed by the Tribunal. However, I find that the amount awarded on the miscellaneous heads need to be increased. The Tribunal had awarded Rs.2,000/- only for funeral expenses, a sum of Rs.23,000/- is added. The Tribunal had allowed only a sum of Rs.5,000/- for loss of consortium for which Rs.95,000/- is added. The Tribunal had allowed only a sum of Rs.2,000/- for loss of love and affection, therefore, a sum of Rs.98,000/- is added; making the total increase to be Rs.2,16,000/-.

From the above, the appeal filed by the insurance company bearing No. FAO-4345-2013 is dismissed whereas appeal filed by the claimants bearing No. FAO-5237-2013 is partly allowed. A sum of Rs.2,16,000/- would be paid by the insurance company within two months, failing which the claimants would be entitled to interest @ 6% per annum from the date of filing of appeal, till realization.

(ANITA CHAUDHRY)
JUDGE

January 09, 2015
sunil