

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No. 1345 of 2001 (O&M)

Date of decision : May 23, 2016

The New India Assurance Company Limited and another

.....Appellants

Versus

Smt. Santosh and others

....Respondents

FAO No. 1346 of 2001 (O&M)

The New India Assurance Company Limited and another

.....Appellants

Versus

Sita Ram and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Neeraj Khanna, Advocate
for appellant No. 2 – Nirmal Kumar.

Mr. B.R. Gupta, Advocate
for respondents No. 1 to 3.

Mr. Ravinder Arora, Advocate
for respondent No. 5 – Insurance company.

LISA GILL, J.

This order shall dispose of two appeals i.e. FAO Nos.
1345 of 2001 (The New India Assurance Company Limited and

another versus Smt. Santosh and others) and 1346 of 2001(The New India Assurance Company Limited and another versus Sita Ram and another).

The aforesaid appeals had been preferred jointly by the insurance company as well as the owner of the offending vehicle, challenging the award dated 12.05.2000 passed by the learned Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as the 'Tribunal').

Challenge was laid to the quantum of compensation awarded to the legal heirs for the deceased Satish Kumar as well as compensation awarded to Sita Ram on account of injuries suffered by him. On an application moved by the insurance company it was allowed to be transposed as a respondent in both the above said appeals vide order dated 24.01.2002. Both the appeals are being pursued by the owner now.

There is no dispute regarding the facts of the case inasmuch as the death of Satish taking place in the accident which occurred on 16.01.1997 as well as Sita Ram having received injuries in the said accident. There is no challenge to the finding of the learned Tribunal regarding the accident having been caused due to rash and negligent driving of the bus No. RJ-31/P/0045 by its driver, respondent No. 2, Mohan Lal.

Learned Tribunal while accepting the income of the deceased Satish, who was professional photographer, to be ₹6,000/- per month, applied the multiplier of 17, keeping in view the age of Satish Kumar to be 25 years at the time of the accident.

Compensation on account of pecuniary loss was assessed as ₹8,16,000/- and a sum of ₹2,000/- was awarded for funeral expenses as well as a sum of ₹5,000/- for loss of consortium. Total compensation of ₹8,23,000/- was awarded to legal heirs of the deceased Satish Kumar.

The claimant Sita Ram suffered amputation of both legs. The period of admission in hospital is not disputed and neither is the medical condition as put forth by Sita Ram. Sita Ram, who was engaged in agricultural pursuit, was awarded a sum of ₹18,96,000/- on account of the injuries suffered by him. The details thereof are as follows:

Compensation for pain and suffering and loss of enjoyment of life	₹1,50,000.00
Compensation for expenditure incurred on treatment including the expenditure on special diet and conveyance and likely to be incurred in future on account of injuries suffered in the accident	₹4,50,000.00
Compensation for expenditure to be incurred on employing attendant 2000x12=24000x12	₹4,32,000.00
Compensation for future pecuniary loss owing to total loss of earning capacity Rs. 4000 x 12 = 48000. 48000x12=8,64,000/- per annum	₹8,64,000.00
Total	₹18,96,000.00

Learned counsel for the appellant/owner has vehemently argued that the quantum of compensation awarded by the learned Tribunal is highly excessive in both the cases. Insofar as the case of compensation awarded to legal heirs of the deceased Satish, it is submitted that there is no evidence on record to show that he was working as a professional photographer or that he was earning a

sum of ₹6,000/-. As regards the claimant Sita Ram, it is urged that the nature of injury and disability do not warrant such excessive compensation.

Per contra learned counsel for the respondent-claimants pray for upholding the award dated 12.05.2000, as just and fair compensation has been awarded. No appeal for enhancement has been filed by the claimants.

A perusal of the file reveals that Satish Kumar was 25 years of age at the time of his death, as borne out by Ex. P3 i.e. Post Mortem Report as well as the evidence of Smt. Santosh widow of Satish. It is also stated by Smt. Santosh that her husband was working as a professional photographer having his own studio in Ukalana Mandi. PW2 Balwant has deposed that deceased Satish Kumar was running a studio in the name of 'Janta Photo Studio' at bus stand Ukalana Mandi and the said witness Balwant himself was a professional photographer. There is nothing on record to doubt the fact that the deceased was running a studio in the name of Janta Photo Studio at bus stand Ukalana Mandi and earning a sum of ₹6000/- per month. No evidence to falsify this fact has been led by the respondents. Thus, there is no infirmity or illegality in the income of the deceased, so assessed by the learned Tribunal.

Considering the matter from another angle, it is clear that as per the settled position of law, even if the income of the deceased is assessed at a slightly lower rate, multiplier of 18 should have been applied, in view of the judgment of the Hon'ble Supreme Court in

Smt. Sarla Verma and others Versus Delhi Transport

Corporation and another 2009 (3) RCR (Civil) 77. Nothing has been awarded on account of loss of consortium to the widow or loss of love and affection to the minor children or on account of loss of future prospects of the deceased, who was only 25 years of age at the time to accident. Only a sum of ₹2,000/- has been awarded on account of funeral expenses. Thus, in this situation there is no ground whatsoever to interfere in the impugned award qua the quantum of compensation awarded to the claimants, which if reworked today, even on the basis of a lower income, would not be substantially different. It is further noticed that the claimants have not preferred any appeal or cross objections claiming enhanced compensation.

Similarly, I do not find any ground to interfere in the quantum of compensation awarded to Sita Ram on account of disability suffered by him. Sita Ram was engaged in agricultural pursuit at the time of the accident and amputation of both lower limbs is a matter of record. In the said factual matrix, it cannot be said that the functional disability suffered by the claimant, who was thirty (30) years old at the time of accident, would not entitle him to compensation as awarded. Hospitalisation of one hundred and thirty three (133) days has been proved during which he underwent numerous operations including the amputation of both legs. Actual expenditure of ₹3,27,745.70 on medical treatment has been proved. The claimant would definitely need to meet future expenses on prosthetics etc. Pain and suffering of the claimant as well as loss of amenities are beyond doubt.

No infirmity or illegality has been pointed out by the learned counsel for the appellant in the impugned award which calls for any interference.

Thus, both the appeals are dismissed.

May 23, 2016
rts

(Lisa Gill)
Judge