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

(1)

FAO No.6586 of 2012 (O&M)
Date of Decision: September 15, 2016.

ICICI Lombard General Insurance Co.Ltd.

..........APPELLANT(s).

VERSUS

Sushila Devi and others

........RESPONDENT(s).

(2)

FAO No.3942 of 2013 (O&M)

Sushila Devi and others

..........APPELLANT(s).

VERSUS

Banwari Lal and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Subhash Goyal, Advocate
for the appellant in FAO-6586-2012 and
for respondent No.3 in FAO-3942-2013.

Mr. Anil Kumar Gahlawat, Advocate
for respondents No.1 to 5 in FAO-6586-2012 and
for appellants in FAO-3942-2013.

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<u>SURINDER GUPTA, J.</u>

The appeals captioned above have been taken up together for disposal as both arise from the award dated 07.09.2012 passed by Motor Accident Claims Tribunal, Bhiwani (later referred to as 'the Tribunal') relating to death of Ashok Kumar (later referred to as 'the deceased') in a motor vehicle accident, which took place on 01.05.2008 due to rash and negligent driving of dumper/trailer bearing registration No.RJ-14GB-2225 (later referred to as 'the offending vehicle') by its driver Banwari Lal.

The appellants-claimants in appeal bearing FAO No.3942 of 2013 are seeking enhancement of compensation, while in FAO No.6586 of 2012 filed by insurer of the offending vehicle, quantum of compensation awarded by the Tribunal has been challenged.

As the only issue involved in these appeals is quantum of compensation, the detailed facts relating to the accident are being skipped for the sake of brevity.

(Hereinafter the appellants in both the appeals will be referred as insurance company and claimants respectively, as referred in the award passed by the Tribunal).

Learned counsel for the insurance company has argued that the accident took place on 01.05.2008 and the income tax return Ex.PW3/A was filed by the wife of the deceased on 15.09.2008 which is inflated one. Wife of the deceased Smt. Sushila, while appearing as PW1 admitted that after the death of her husband, she was receiving commission for the insurance policies got issued by her husband, which shows that there was no loss of income. The insurance company has taken the plea in para 5 of grounds of appeal that commission which was being received by the deceased would be received after the death of Ashok Kumar by his widow Smt. Sushila Devi. Learned Tribunal thus, has erroneously taken the income of the deceased as ₹2,91,149/- per annum.

Learned counsel for the claimants has argued that as per the observations in case of ***Rajesh and others Vs. Rajbir and others (2013)9 SCC 54,*** the claimants are entitled to 50% addition in the income of the deceased towards future prospects; widow of the deceased is entitled to compensation for loss of consortium; minor children of the deceased for loss of love and affection, care and guidance and parents of the deceased for loss of estate, love and affection. He has argued that income of the deceased shown in the income tax return Ex.PW3/A was not inflated. It was proved that the deceased was receiving commission of ₹2,91,149.63p from the insurance company as he was working as agent of Life Insurance Corporation of India (LIC of India). The Tribunal while taking the income of the deceased had applied 30% deduction towards his income tax. Dev Raj, official of LIC of India was examined to prove that the income of deceased was ₹2,91,149.63p. In view of the direct evidence regarding income of the deceased, this argument of learned counsel for the insurance company that in the income tax return filed after the death of the deceased, inflated income of the deceased has been shown is without any basis. The Tribunal has also taken note of the fact that the deceased was also having income of ₹1,49,703.96p from shares which was not considered while assessing income of the deceased. Nothing was elucidated from examination of Dev Raj that claimants will keep on getting any income towards commission even after the death of the deceased if so to what extent. For want of any evidence, the Tribunal has rightly not taken this aspect into account.

It is not disputed that the deceased was agent of LIC of India and had received ₹2,91,149.63p as commission for the job performed by him during the year 2007-08. The argument of learned counsel for the insurance company that the commission paid to the deceased was not his permanent income and that even after his death, his family will keep on getting the commission on the policies which were taken through the deceased, has no merits. Nothing was brought on record as to how much amount claimants will keep on getting towards commission even after the death of the deceased. It was incumbent on the insurer to produce evidence on this point for consideration of the Tribunal. In the absence of any evidence to this effect, the Tribunal has rightly not taken note of the plea raised by learned counsel for the insurance company.

As per the observations in case of ***Rajesh and others Vs. Rajbir and others (supra),*** the claimants are entitled to 50% increase in the income of the deceased, who was 32 years of age. Though the amount of ₹2,91,149.63p was not permanent income of the deceased but this was the source of earning of the deceased and can be safely taken as his income. It appears that the deceased was well-established in his job as agent of LIC of India and this is why he was having income around ₹3 lacs towards commission. With the passage of time, there was every possibility of progress and advancement in his profession. It is also apparent that deceased had invested a considerable amount in shares so as to have income of around ₹1,50,000/- from that source as well. This indicates that deceased was an energetic worker and entrepreneur. Such persons do advance and progress with passage of time and take their job and business to higher levels. In the facts and circumstances, addition of 50% in the income of the deceased can be safely taken, as per observations in case of ***Rajesh and others Vs. Rajbir and others (supra).***

The law is well-settled that wife of the deceased is entitled to compensation for the loss of consortium, minor children for the loss of love and affection, care and guidance and parents of the deceased for loss of estate, love and affection. The quantum of compensation under all the above heads is quantified as ₹1 lac each.

In view of my above discussion, the compensation to which the claimants are entitled, works out as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹291149 per annum
(ii)	50% of (i) above to be added as future prospects	(₹291149+ ₹145575) = (₹436724)p.a.
(iii)	30% deduction towards income tax (as made by the Tribunal)	₹436724-₹131017= ₹305707
(iv)	1/4th of (iii) deducted as personal expenses of the deceased	(₹305707-₹76427)= ₹229280
(v)	Compensation after multiplier of 16 is applied	(₹229280 X16)= ₹3668480
(vi)	Loss of consortium	₹100000
(vii)	Loss of care and guidance for minor children	₹100000
(viii)	Loss of estate	₹100000
(ix)	Funeral expenses (as allowed by the Tribunal)	₹20000
Total		₹3988480

Learned counsel for the insurance company has also raised a plea that the offending vehicle was having permit issued only for Rajasthan State while the accident had occurred in the territory of Haryana. The offending vehicle was operating in the area beyond its permit, thereby committing breach of terms and conditions of the insurance policy, as such, the insurance company is entitled to right to recover the compensation paid to the claimants.

The above point was considered by the Tribunal but discarded with the observation that the owner of the offending vehicle has deposited the necessary taxes with Haryana Transport Authorities for plying the offending vehicle in the territory of Haryana. This fact has been duly proved by RW2 Karan Singh, official of Deputy Excise and Taxation Commissioner, Narnaul. As the Tribunal has looked into this submission of insurer and has discarded the same on the basis of evidence on file, I find no reason to interfere with the observations of the Tribunal to this effect.

As a sequel of my above discussion, the appeal filed by the insurance company (FAO No.6586 of 2012) has no merits and is dismissed and the appeal filed by the claimants (FAO No.3942 of 2013) has merits and is accepted. The award of the Tribunal is modified and the compensation allowed to the appellants-claimants is enhanced from ₹24,67,264/- to ₹39,88,480/- for the death of Ashok Kumar. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the petition till actual realisation. The amount of enhanced compensation shall be apportioned between the claimants as below:-

(i)	Claimant No.1-widow	: 40%
(ii)	Claimants No.2 & 3 minor children	: 20% each
(iii)	Claimants No.4 & 5 parents	: 10% each

Insurance company will deposit the share of appellants-claimants No.1, 4 and 5 in their bank accounts or pay the same through demand drafts. The share of minor claimants No.2 (Prince) and claimant No.3(Monika), who as per their age given at the time of filing of the petition, are still minors, will be deposited in some nationalised bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. In case of demise of any of above claimant(s), his/her share of compensation shall be apportioned equally amongst other surviving claimants. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹10,000/-.

(SURINDER GUPTA)
JUDGE

September 15, 2016.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No