

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

(1) **FAO No.1808 of 2015 (O&M)**
Date of decision : 18.11.2016

Oriental Insurance Company Ltd.

.....Appellant

Versus

Saroj Sharma and others

...Respondents

(2) **FAO No.105 of 2016 (O&M)**
Date of decision : 18.11.2016

Smt. Saroj Sharma and others

.....Appellants

Versus

Buta Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Harsh Aggarwal, Advocate for appellant-Insurance Company in FAO No.1808 of 2015 and for respondent No.3-Insurance Company in FAO No.105 of 2016.

Mr. Jagjit Singh Chatrath, Advocate, *Amicus Curiae* on behalf of respondents No.1 to 3 in FAO No.1808 of 2015 and on behalf of appellants-claimants in FAO No.105 of 2016.

Mr. Ramesh Sharma, Advocate for respondents No.4 & 5 in FAO No.1808 of 2015 and for respondents No.1 & 2 in FAO No.105 of 2016.

DARSHAN SINGH, J.

CM-5371-CII-2015 in
FAO-1808-2015

There is delay of 01 day in filing the present appeal. The appellant has filed an application under Section 5 of the Limitation Act for condonation of the delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 01 day in filing the present appeal is hereby condoned.

CM-212-CII-2016 in
FAO-105-2016

There is delay of 330 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of the delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 330 days in re-filing the present appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals captioned above, which have arisen out of the same award dated 05.11.2014, passed by learned Motor Accidents Claims Tribunal, Jalandhar (hereinafter called the “Tribunal”), vide which the appellants-claimants of FAO No.105 of 2016 have been awarded compensation to the tune of

Rs.18,53,000/- on account of death of Saurabh Sharma in the motor vehicular accident, which took place on 19.06.2013.

2. FAO No.1808 of 2015 has been filed by the Oriental Insurance Company Limited (respondent No.3 in the claim petition) to assail the award, whereas FAO No.105 of 2016 has been filed by the claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Initiating the arguments, Mr. Harsh Aggarwal, Advocate, learned counsel for the appellant-Insurance Company contended that the income of the deceased has been taken on higher side by the learned Tribunal. The deceased was just a diploma holder. The learned Tribunal has also wrongly granted the future prospects towards the income of the deceased, as the deceased was not holding any permanent post having the regular increments. He further contended that father of the deceased was not depending upon the income of the deceased. The sister of the deceased shall be considered to be the dependent upon her father. So, the learned Tribunal has wrongly deducted 1/3rd of the income of the deceased. 50% of the income of the deceased should have been deducted. Thus, he contended that exorbitant amount of compensation has been granted.

5. On the other hand, Mr. Jagjit Singh Chatrath, Advocate, the *Amicus Curiae* appointed to assist this Court on behalf of respondents No.1 to 3-claimants contended that the learned Tribunal has taken the

income of the deceased on the lower side. Actually he was earning Rs.15,000/- per month. He was working as a Software and Hardware Engineer after obtaining the Diploma of Computer Science. The future prospects has also been rightly granted towards the income of the deceased. He further contended that the deceased had three dependants, so 1/3rd of his income has also been rightly deducted by the learned Tribunal towards his personal and living expenses. Thus, he contended that just amount of compensation has not been awarded by the learned Tribunal.

6. I have duly considered the aforesaid contentions.

7. Firstly, we are to consider as to whether the learned Tribunal has correctly determined the income of the deceased. As per the case of the claimants deceased Saurabh Sharma was having Diploma of Computer Science. He was 25 years of age and was working as a Software and Hardware Engineer. It is alleged that he was earning Rs.15,000/- per month and his clients are growing day by day. The learned Tribunal on appreciation of the evidence brought on record determined the income of the deceased to be Rs.8000/- per month. The said conclusion of the learned Tribunal seems to be correct. The claimants have examined Professor R.C. Sharma as AW-3, who deposed that deceased was working with him as a Computer Operator and was getting Rs.8500/- per month as salary. He has proved the salary certificate Ex.P13. The claimant also examined AW-4 Arvinder Singh, who also deposed that deceased was working in his institute as Computer

Hardware and Software Maintenance Engineer in the evening session and was getting the salary at the rate of Rs.6500/- per month. He also proved the salary certificate Ex.P14. But these salary certificates are not supported by any corroborative evidence. AW-4 Arvinder Singh has admitted in the cross-examination that certificate Ex.P14 does not bear any serial number and seal of the company. He has also not brought the salary register or the attendance register. Similar is the position with respect to AW-3 R. C. Sharma. He has also not brought any record to show that the employment of the deceased with him. So, the learned Tribunal has rightly discarded the salary certificates Ex.P13 and Ex.P14. But keeping in view the fact that the deceased was a diploma holder and was skilled person, so no fault can be found with the income of the deceased determined by the learned Tribunal to be Rs.8000/- per month.

8. As the deceased was a skilled person having advance diploma in computer application, so his income was bound to increase with the passage of time. Thus, the learned Tribunal has rightly granted 50% future prospects towards the income of the deceased and the total annual income of the deceased has been taken to be Rs.1,44,000/- per annum.

9. However, I found substance in the contentions raised by learned counsel for the appellant-Insurance Company that the learned Tribunal has wrongly deducted 1/3rd income of the deceased towards his personal and living expenses. The deceased in this case was a bachelor. The claimants are the mother, father and sister of the deceased. This fact

is not disputed that the father of the deceased was working as an Inspector with the Cooperative Societies. So, he was not dependent upon the income of the deceased. Claimant No.3 Miss Pallavi Sharma the sister of the deceased will be considered to be dependant upon her father. So, only claimant Smt. Saroj Sharma, the mother of the deceased, shall be considered to be dependent on the income of the deceased and 50% of the income of the deceased should have been deducted towards his personal and living expenses. Reference can be made to case ***Sarla Verma and others Vs. Delhi Transport Cooperation and another (2009) 6 SCC 121.*** Thus, after deducting 50% of the income of the deceased, the remainder comes to Rs.72,000/-. The learned Tribunal has rightly applied the multiplier of 18, so the loss of dependency comes to Rs.12,96,000/-. The learned Tribunal has rightly awarded a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.1,00,000/- to the mother of the deceased towards loss of love and affection of her young son. Thus, the amount of compensation payable to the claimants comes to Rs.14,21,000/-.

10. Thus, keeping in view my aforesaid discussion, FAO No.105 of 2016 preferred by the appellants-claimants has no merits and the same is hereby dismissed. FAO No.1808 of 2015 preferred by the appellant-Insurance Company is hereby partly allowed. The amount of compensation payable to the appellants-claimants is reduced to Rs.14,21,000/- from Rs.18,53,000/- as awarded by the Tribunal. The liability to pay the aforesaid amount of compensation, if already not paid

and apportionment amongst the claimants and rate of interest shall remain as determined by the learned Tribunal in the main award.

18.11.2016

sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No