IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4236 of 2013
Date of Decision.24.05.2016

The New India Assurance Company Limited .....Appellant

Vs.

Arjinder Pal and others ....Respondents

2. **X Obj No.178-CII of 2015 and FAO No.4237 of 2013**

The New India Assurance Company Limited .....Appellant

Vs.

Satnam Singh and others ....Respondents

3. **FAO No.1551 of 2014**

Arjinder Pal and others .....Appellants

Vs.

Kamal Kumar and others ....Respondents

Present: Mr. Neeraj Khanna, Advocate
for the appellant in FAO No.4236 and 4237 of 2013 and
for the respondent No.3 in FAO No.1551 of 2014.

Mr. Sunder Singh, Advocate
for the appellant in FAO No.1551 of 2014 and
for respondent Nos.1 to 5 in FAO No.4236 of 2013.

Mr. Arun Takhi, Advocate
for respondent Nos.6 and 7 in FAO Nos.4236 of 2013.
and for respondent Nos.5 and 6 in FAO No.4237 of 2013.

Mr. Ram Kumar Chauhan, Advocate
for the cross objectors in FAO No.4237 of 2013.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Both the appeals filed by the insurance company in FAO Nos.4236 and 4237 of 2013 are connected and they address the issue of assessment of compensation for death of two persons who were travelling in a motor cycle. One was case of death of 16 years old person named Gurjit and the claimants were parents. Since he was still a non-earning member, the Tribunal took the income at ₹3000/- per month, provided for $1/4^{th}$ deduction, applied a multiplier of 18 and assessed the compensation at ₹4,96,000/-. The assessment is erroneous on several grounds and I will rework the compensation on the following parameters.

2. I will take the income as taken by the Tribunal at ₹3000/- per month as an expectation which the parents could have had out of a student and make a deduction of 50% and apply a multiplier of 18 and assess the loss of dependence at ₹3,24,000/-. I will allow for additional compensation of ₹1 lac for parents towards loss of love and affection and provide for ₹25,000/- as funeral expenses. The total compensation shall be ₹4,49,000/-. The Tribunal has provided for ₹4,96,000/-. The total amount of compensation will be less than what has been assessed by the Tribunal.

3. The counsel appearing on behalf of the claimant has come in an independent appeal in FAO No.1551 of 2014 and has prepared a chart taking the income as ₹5000/- per month, made a further prospect of increase at ₹2500/- and worked out a loss of dependence at ₹12,15,000/-. There will be no reason for taking an assessment of income of a non-earning member for ₹5000/- and make a prospect of further increase. A prospect of further increase will surely to apply in cases where the person had a settled income and who could have surely secured a higher prospect of increase. Where a person claims the compensation for a non-earning member,

Schedule II provided for the notional income to be ₹15,000/- per year. The issue of assessing the correct compensation for students have always been done with certain conjectures and the judicial dispensation has not been at all times very consistent. In the decision in ***Lata Wadhwa Vs. State of Bihar 2001(8) SCC 197,*** the Supreme Court was considering the case of death of young children and assessed a compensation of ₹3,50,000/-, taking the amount as possible in an employment environment that provided a sure prospect for children of TISCO employees to be also employed. In ***M.S. Grewal v. Deep Chand Sood (2001) 8 SCC 151*** the Supreme Court was considering the case of death of children in a boat tragedy, all of whom were studying in a public school at Doon and the Supreme Court provided for a compensation of ₹5 lacs to the parents. In ***Kishan Gopal v. Lala, (2014) 1 SCC 244***, the child was aged 10 years and the parents were the claimants. The Supreme Court took the notional income at ₹30,000/- per year, applied a multiplier of 15 and provided ₹50,000/- as love and affection while assessing the compensation at ₹5 lacs. The assessment to ₹3000/- as notional income per month was quite appropriate and I may not be able to make a further increase unless there was a sure evidence about the relative status of family and the likely expectation of a parent for the child of what he could have done and how he could have contributed. I had suggested whether the insurance company would be willing to accommodate a larger claim than what was assessed by the Tribunal. I had asked whether an additional amount of ₹3,50,000/- could be considered. The counsel for the insurance company states that it has not been possible for him to secure instructions.

4. I have tried to apply the arithmetics of what would be

appropriate and I am unable to find any scope for increase of what has already been awarded by the Tribunal. I will make no interference. Although the amount determined by the Tribunal is relatively more than what I have arrived at in FAO No.4236 of 2013, I do not feel inclined to modify this amount as awarded by the Tribunal. The appeal in FAO No.4236 of 2013 by the insurance company and the appeal in FAO No.1551 of 2014 by the claimants are dismissed.

5. The appeal in FAO No.4237 of 2013 is an appeal by the insurance company against the assessment to compensation for death of another Gurjit who was aged 21 years and was driving the motor cycle. He was said to be a crane operator and the Tribunal took the income at ₹20,000/- per month. The counsel for the insurance company contends that there is no proof that he was a crane operator and evidence by the father was that he was employed in Gujarat first and later he was employed in Tamil Nadu. Considering the fact that he was only 21 years of age, the father's evidence that his son was employed for last four years, cannot be true. I only would take that he was making an exaggeration of his son's status of employment. It should have been possible for a parent to produce some document to show that his son had qualified himself to operate a crane, for it is a heavy machine and it requires special skills and not less than a person 21 years of age could be competent to operate a crane. All that the claimants were able to produce before the Tribunal was some entry in diary which the son was reported to have made that he was earning ₹20,000/- per month. This document is not even available in file and is found missing and the counsel is not able to substitute with any document which can invoke a confidence on the document to act on. I must also observe that for the

relevant assessment year 2011-2012, the taxable income fell at ₹1,60,000/- and if he was earning ₹2,40,000/-, he should have been paid income tax. I have no means of assessing his income at ₹20,000/- as taken by the Tribunal and I will take the income of the deceased at ₹10,000/- and apply a 50% deduction of the same and take ₹5000/- as contribution to the family. I will apply a multiplier of 18 to assess the loss of dependence at ₹10,80,000/-. I will provide another ₹1 lac for loss of love and affection to the parents, additional ₹20,000/- for funeral expenses and another ₹10,000/- towards loss to estate. The aggregate compensation shall be ₹12,10,000/-. The amount in excess which has been assessed by the Tribunal is set aside and the appeal filed by the insurance company in FAO No.4237 of 2013 is allowed and the cross objection filed by the claimants is dismissed.

(K. KANNAN)
JUDGE

May 24, 2016
Pankaj*