

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

Date of decision:16.8.2016

1.

FAO No.5097 of 2013(O&M)

Kaushalya Devi and others

....Appellants

VERSUS

Rakesh Kumar and others

.....Respondents

Present: Mr. Amit Jaiswal, Advocate for the appellants.

None for respondents No.1 and 2.

Mr. G.D. Gupta, Advocate for respondent No.3.

Mr. Ravi Gakhar, Advocate for
Mr. Jagdish Manchanda, Advocate for respondent No.5.

2.

FAO No.5098 of 2013(O&M)

Sanjal Devi

....Appellant

VERSUS

Rakesh Kumar and others

.....Respondents

Present: Mr. Amit Jaiswal, Advocate for the appellant.

None for respondents No.1 and 2.

Mr. G.D. Gupta, Advocate for respondent No.3.

Mr. Ravi Gakhar, Advocate for
Mr. Jagdish Manchanda, Advocate for respondent No.4.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of FAO Nos.5097 and 5098 of 2013 as
these have emerged out of the same award dated 29.05.2013 whereby

compensation has been awarded in favour of the claimants with regard to death of Vijay and Ajay sons of Naresh.

FAO No.5097 of 2013

Kaushalya Devi and others, claimants/appellants, have been awarded compensation to the tune of Rs.4,95,500/- (rounded off to Rs.4,96,000/-) i.e. loss of dependency Rs.4,86,000/- + Rs.9500/- for loss of estate, funeral expenses and consortium.

Counsel for the appellants has submitted that the Motor Accident Claims Tribunal, Ambala (in short ‘ the Tribunal’) has not allowed benefit of increase in income for future prospects, compensation for loss of love and affection and compensation under conventional heads requires enhancement, in the light of judgments of Hon’ble the Apex Court Rajesh and others Vs. Rajbir Singh and others, 2013 (3) RCR (Civil) 170 and Vimal Kanwar and others Vs. Kishore Dan and others, 2013 (2) RCR (Civil) 945.

Counsel for the insurer has supported the award passed by the Tribunal.

The learned Tribunal assessed income of the deceased as Rs.3600/- per month, deducted 1/4th for personal expenses, adopted a multiplier of 15 to compute loss of dependency. The appellants are entitled to benefit of increase in income for future prospects to the extent of 50% as the deceased was less than 40 years of age. Compensation qua loss of dependency comes to Rs.7,29,000/- [Rs.4,86,000/- + Rs.2,43,000/- (50% future prospects)].

The widow shall be entitled to an amount of Rs.1,00,000/- for loss of consortium; children namely Sarita, Kundan and Rupali (all minors) shall be entitled to an amount of Rs.2,25,000/- in equal share and

Sanjal Devi, mother, is awarded an amount of Rs.50,000/- for loss of love and affection. The appellants shall be entitled to an amount of Rs.25,000/- each for funeral expenses and loss of estate.

The total compensation payable to the appellants comes to Rs.11,54,000/- and the enhanced compensation is Rs.6,58,000/- (Rs.11,54,000/- - Rs.4,96,000/-). The appellants shall be entitled to interest at the rate of 7.5% per annum on the compensation assessed by the Tribunal as well as enhanced compensation from the date of filing of petition till realization.

The compensation payable to children and mother towards loss of love and affection shall be payable to them as per their entitlement as discussed hereinbefore; remaining enhanced compensation shall be paid to widow of the deceased. The enhanced compensation payable to children shall be deposited in a Fixed Deposit Receipt till they attain the age of majority and payable to widow for a period of three years.

FAO No.5098 of 2013

The Tribunal assessed income of deceased Ajay at Rs.3600/- per month, deducted 1/3rd for personal expenses, adopted a multiplier of 16 to compute loss of dependency to the tune of Rs.4,60,800/- and another amount of Rs.9500/- has been awarded for loss of estate, funeral expenses and consortium, making total compensation to the tune of Rs.4,70,300/- rounded off to Rs.4,71,000/-.

Counsel for the Insurance Company has submitted that as per the case set up by Naresh and Sanjal Devi (originally filed) the deceased was not married but later Puneeta Devi, alleged to be wife of Ajay, was impleaded as respondent No.5 before the Tribunal. It is argued with vehemence that as parents of the deceased made a wrong statement of fact,

the petition for compensation as well as appeal seeking enhancement is liable to be dismissed.

Counsel for the claimants has pointed out that as Puneeta Devi had re-married with one Rajesh Manjhi after death of Ajay, the parents did not implead her as a party but later they filed an application for her impleadment that was allowed by the Tribunal and the order in this regard has attained finality. It is submitted that in the circumstances, no adverse view may be taken to deny benefit of compensation admissible to the claimants.

I have heard counsel for the parties, perused the paper-book particularly the award passed by the Tribunal.

It is an undisputed position of the case that with regard to death of Ajay, originally the petition was filed by his parents Naresh and Sanjal Devi but later an application was filed by the claimants themselves for impleading Puneeta Devi on the array of respondents. The application was allowed and the order has attained finality. Due to some incorrect legal advice or mis-conception that as Puneeta Devi had already performed marriage after death of Ajay, parents of the deceased made a representation that the deceased was unmarried. As mistake committed by the parents was voluntarily rectified coupled with the factum that no appeal has been preferred by the insurer against award passed in favour of parents and widow of the deceased, I do not find it lawful to deny just compensation to the claimants.

In view of the discussion made hereinbefore while disposing of FAO No.5097 of 2013, loss of dependency in regard to death of Ajay is calculated at Rs.6,91,200/- [Rs.6,91,200/- (Rs.3600/- x 12 x 16) +

Rs.3,45,600/- (50% future prospects) – Rs.3,45,600/- (1/3rd deduction towards personal expenses)].

The widow of the deceased shall be entitled to an amount of Rs.1,00,000/- for loss of consortium. The mother of the deceased is awarded an amount of Rs.50,000/- for loss of love and affection. The appellants shall be entitled to Rs.25,000/- each for expenses on funeral and loss of estate.

The total compensation payable to the appellants comes to Rs.8,91,200/- and the enhanced compensation is Rs.4,20,200/- (Rs.8,91,200/- - Rs.4,71,000/-). Out of enhanced compensation, an amount of Rs.1,00,000/- shall be payable to widow of the deceased and the remaining shall be payable to mother of the deceased. The appellants shall be entitled to interest at the rate of 7.5% per annum on the compensation assessed by the Tribunal as well as on enhanced compensation from the date of filing of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO Nos.5097 and 5098 of 2013

Keeping in view the hardship caused to the claimants by imposing condition of furnishing of security by the insured before compensation is disbursed in their favour, without any fault attributable to them, the said condition imposed by the Tribunal is ordered to be set aside.

Disposed of accordingly.

AUGUST 16, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no