

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

Decided on: 19.09.2016

1. FAO No.4066 of 2015 (O&M)

IFFCO Tokio General Insurance Company Limited Appellant

Versus

Rekha Devi and others Respondents

2. FAO No.5332 of 2015

Rekha Devi and others Appellants

Versus

Jagsir Singh and another Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Yogesh Gupta, Advocate
for the appellant (in FAO No.4066 of 2015)
and for respondent No.2 (in FAO No.5332 of 2015)

Mr. Ashwani Arora, Advocate
for respondents No.1 to 8 (in FAO No.4066 of 2015)
and for the appellants (in FAO No.5332 of 2015)

REKHA MITTAL, J.

This order will dispose of FAO Nos.4066 of 2015 '*IFFCO Tokio General Insurance Company Limited vs Rekha Devi and others*' and No.5332 of 2015 '*Rekha Devi and others vs Jagsir Singh and another*' as these have emerged out of the same award dated 23.04.2015 passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') whereby compensation has been awarded in favour of Smt. Rekha Devi and others in regard to death of Nathu Ram in a motor vehicular accident on 04.03.2014 due to rash and negligent driving of truck No.PB-13-AB-5418 by Sh. Jagsir Singh.

The learned Tribunal assessed income of the deceased at

Rs.6,000/- per month, allowed benefit of future prospects to the extent of 50%, deducted 1/5th for personal expenses and adopted a multiplier of 15 to compute loss of dependency to the tune of Rs.12,96,000/-.

Under the conventional heads, compensation was awarded as follows:-

SR No.	HEADS	AMOUNT
1	Loss of consortium	Rs.1,00,000/-
2	Loss of estate	Rs.1,00,000/-
3	Loss of love and affection to claimants No.2 to 7	Rs.1,00,000/- each
4	Funeral expenses	Rs.25,000/-

The total compensation is Rs.21,21,000/- payable with interest @ 7.5% per annum from the date of petition till realization in the ratio detailed in para 10 of the award i.e. 30% to the wife and the remaining 70% to the extent of 10% each to the remaining claimants. The parties shall be referred to as '*the claimants*' and '*the insurance company*' for the sake of convenience.

The claimants are in appeal seeking enhancement of compensation whereas the insurance company has assailed the award only with regard to quantum of compensation assessed by the learned Tribunal.

Counsel for the insurance company would contend that the compensation awarded by the Tribunal under conventional heads requires reduction particularly compensation for loss of love and affection and loss of estate. In support of his contention, he has relied upon the latest judgment of Hon'ble the Supreme Court "*Shashikala and others vs Gangalakshamma and another*", 2015(2) RCR (Civil) 510 wherein the Hon'ble Court after taking into consideration

the earlier judgments ***“Rajesh and others Vs. Rajbir Singh and others”***, 2013(3) R.C.R. (Civil) 170 and ***“Jiju Kuruvila and others vs Kunjamma Mohan and others”***, 2013(3) RCR (Civil) 817 awarded an amount of Rs.1,00,000/- towards loss of love and affection to the minor children and Rs.25,000/- for loss of estate. Further reference has been made to judgment of this Court ***“Rani Devi and others vs Navneet Singh and others”***, FAO No.5064 of 2015 decided on 01.09.2016, wherein compensation of Rs.1,00,000/- to three children for loss of love and affection was affirmed.

Counsel for the claimants has supported grant of compensation of Rs.1,00,000/- each to the minor children for loss of love and affection and Rs.1,00,000/- for loss of estate by referring to judgments of Hon'ble the Supreme Court ***Jiju Kuruvila and others case (supra)***, ***“Neeta w/o Kallappa Kadolkar and others vs Divisional Manager, MSRTC, Kolhapur”***, 2015(1) RCR (Civil) 625, ***“Asha Verman and others vs Maharaj Singh and others”***, 2015(2) RCR (Civil) 520, ***“Kalpanaraj and others vs Tamil Nadu State Transport Corporation”***, 2014(2) RCR (Civil) 876. Reference has also been made to judgments of this Court ***“Bhateri and others vs Sukbir and others”***, FAO No.4890 of 2011 decided on 01.12.2015 and ***“Reeta Mahajan and others vs Hans Raj and others”***, FAO No.1338 of 2008 decided on 03.05.2016.

Counsel for the claimants has asserted that compensation qua loss of dependency needs enhancement as income of the deceased is liable to be assessed at Rs.7,350/-, minimum wage in Chandigarh w.e.f. 01.10.2013 to 31.03.2014. To support his contention, it has been

argued that though the deceased originally hails from Uttar Pradesh but at the time of accident, he was working and residing in Chandigarh, therefore, the claimants are entitled to compensation on the basis of minimum wage fixed by the U.T. Administration. In addition, it is argued that as the deceased had a large family to support consisting of six children from ages 13 years to 01 year besides his widow and old aged mother, he was to put extra effort to earn livelihood for his family and in the given circumstances, his income is liable to be assessed more than the minimum wage. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court of India **“*Jakir Hussein vs Sabir and others*”**, 2015(2) RCR (Civil) 141, wherein the Court has held, reads thus:-

“After careful examination of the facts and legal evidence on record, it is not in dispute that the appellant was working as a Driver at the time of the accident and no doubt, he could be earning Rs.4,500/- per month. As per the notification issued by the State Government of Madhya Pradesh under Section 3 of the Minimum Wages Act, 1948, a person employed as a Driver earns Rs.128/- per day, however the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to determine the compensation under the future loss of income. Minimum wage, as per State Government notification alone may at times fail to meet the requirements that are needed to maintain the basic quality of life since it is not inclusive of factors of cost of living index. Therefore, we are of the view that it would be just and reasonable to consider the appellant's daily wage at Rs.150/- per day (Rs.4,500/- per month i.e. Rs.54,000/- per annum) as he was a Driver of the motor vehicle which is a

skilled job”.

I have heard counsel for the parties, perused the paperbook and the records of the Tribunal.

Before adverting to the submissions made by counsel for the parties with regard to compensation under conventional heads, I would like to take up the issue ***“Whether the claimants are entitled to benefit of minimum wage available in U.T. Chandigarh at the relevant time much less their entitlement at a rate more than minimum wage as well”?***

As has been noticed hereinbefore, the Tribunal has assessed income of the deceased at Rs.6,000/- per month. The deceased, indisputably, originally hails from Uttar Pradesh. There is nothing on record suggestive of the fact that minimum wage available in Uttar Pradesh at the time of accident was more than Rs.6,000/- per month.

The plea of the claimants is that the deceased was working as an auto driver at a salary of Rs.15,000/- per month. To substantiate their claim, one of the claimants Ms. Rekha Devi, widow of the deceased tendered into evidence her affidavit Ex.PW-1/A by way of examination-in-chief. In the opening para of affidavit, she has deposed that Sh. Nathu Ram was hale and hearty, a driver of three-wheeler No.CH-04-L-4860 owned by Sh. Ahmed of Bapu Dham, Sector 26, Chandigarh getting a monthly salary of Rs.15,000/- per month. It is further deposed that he used to give a sum of Rs.13,000/- per month to the deponent for meeting household expenses. In cross-examination, she has admitted that she has got no proof to prove salary of her deceased husband. She has denied the suggestions put by counsel

opposite to challenge avocation of the deceased, his salary of Rs.15,000/- or Rs.13,000/- per month being paid to her to meet household expenses. The claimants did not examine Sh. Ahmed to prove that the deceased was working as a driver of three-wheeler owned by said Ahmed. Even the registration certificate of the said three-wheeler has not been proved. The statement of Smt. Rekha Devi is conspicuously silent as to since when Sh. Nathu Ram was residing in Chandigarh much less working for Sh. Ahmed. The claimants have failed to adduce satisfactory much less cogent and convincing evidence to establish that the deceased was working as a driver on a three-wheeler owned by Sh. Ahmed. This apart, it is difficult to believe that driver of a three-wheeler would be getting monthly salary of Rs.15,000/-. In this view of the matter, the Tribunal has rightly refused to rely upon testimony of Smt. Rekha Devi and plea of the claimants that the deceased was working as a driver on a three-wheeler at a monthly salary of Rs.15,000/-.

This brings the Court to the aspect of assessment of income at Rs.7,350/- per month, minimum wage in Chandigarh at the relevant time. The occurrence in question took place on 04.03.2014 and the deceased met an unfortunate end in Sector 26, Chandigarh. As has been noticed hereinbefore, the claimants have not examined the alleged employer of deceased – Nathu Ram. There is no evidence on record as to the address at which the deceased was residing. The widow of the deceased is silent as to since when Nathu Ram was working in Chandigarh. No document has been placed on record to prove residence of the deceased at Chandigarh. However, counsel for the claimants

invited attention of the Court towards postmortem report Ex.P1 wherein address of House No.11, Phase 1 BDC, Sector 26 has been mentioned. There is no evidence as to at whose instance this address was supplied to the Government College Hospital, Sector 32, Chandigarh for an entry in the postmortem report. No evidence has been adduced as to whom the said house belongs much less that the deceased was residing in the said house. On the contrary, a series of documents (Ex.P2 to Ex.P5) produced on record by the claimants would indicate that in all these documents like Identity Card issued by Election Commission of India, Aadhar Card by the Government of India and the Driving Licence by the Licensing Authority, address of the deceased is that of Uttar Pradesh. The claimants have failed to produce even an iota of evidence to substantiate their claim that as deceased was ordinarily residing in Chandigarh, his income is liable to be assessed on the basis of minimum wage available in U.T. Chandigarh in March 2014.

Counsel for the claimants has raised an issue that income can be assessed more than minimum wage by relying upon the judgment in *Jakir Hussein's case (supra)*. In the said case, Hon'ble the Apex Court assessed income of the injured more than minimum wage on the basis of claim that the appellant was working as a driver at the time of accident and no doubt he could be earning Rs.4,500/- per month. It has never been held that without proving income of the victim/deceased, the Tribunal can still assess the income more than minimum wage, as has been sought to be contended by the claimants. Analyzed from any angle, I find myself unable to accept the submission that income of the deceased is liable to be assessed more than what has

been determined by the learned Tribunal.

The insurance company has challenged grant of compensation at Rs.1,00,000/- each to six children and another Rs.1,00,000/- for loss of estate. There is no consistency in the judgments passed by Hon'ble the Apex Court or this Court with regard to compensation payable under conventional heads. No doubt, the children get love, affection, care and guidance from their parents. However, in case the family is large, the children would get divided attention and care of the parents. On the contrary, if there is only one child, the entire focus of the parents would be on that child alone. In the case at hand, the claimant family is admittedly residing in Uttar Pradesh. Keeping in view economic status of the family and number of children, it is difficult to accept award of compensation at Rs.1,00,000/- to each of the children. Taking a cumulative view of the facts and circumstances discussed hereinbefore and a clue from the judgments rendered by Hon'ble the Supreme Court along with the fact that compensation can neither be pittance nor a bonanza, largesse or a source of profits, in my considered opinion, it would be in the fitness of things, if the children are allowed an amount of Rs.3,00,000/- in equal share for loss of love and affection, care and guidance. Similarly, in view of income of the deceased coupled with his liability to maintain a large family, compensation qua loss of estate is reduced to Rs.25,000/-. However, Smt. Ram Kala, mother of the deceased is awarded an amount of Rs.50,000/- for loss of love and affection. In this manner, compensation awarded by the learned Tribunal is reduced to the extent of Rs.3,25,000/-, recoverable by the insurance company, if already paid.

For the foregoing reasons, the appeal filed by the insurance company is partly allowed in the aforesaid terms. As a natural corollary, appeal preferred by the claimants fails and is accordingly dismissed.

19.09.2016

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No