

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

(1)

FAO No.8978 of 2014

Date of decision : 22.03.2016

Reliance General Insurance Company Ltd.

.....Appellant

Versus

Smt. Rajbala and others

...Respondents

(2)

FAO No.9647 of 2014

Date of decision : 22.03.2016

Smt. Rajbala and others

.....Appellants

Versus

Manjit Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Nitin Mittal, Advocate for
Mr. P.M. Goyal, Advocate for appellant-Insurance Company
in FAO No.8978 of 2014 and for respondent No.3
in FAO No.9647 of 2014.

Mr. A.K. Singal, Advocate for respondents No.1 to 5
in FAO No.8978 of 2014 and for appellants
in FAO No.9647 of 2014.

DARSHAN SINGH, J.

This judgment of mine shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 25.04.2014 passed by learned Motor Accidents Claims Tribunal, Sonapat (hereinafter called the 'Tribunal'), vide which appellants of FAO No.9647 of 2014 have been awarded compensation to the tune of Rs.13,93,750/- along with interest @ of 7.5% per annum from the date of filing the petition till realisation thereof, on account of death of Devender Singh in the motor vehicular accident which took place on 02.02.2012.

2. FAO No.8978 of 2014 has been filed by Reliance General Insurance Company Ltd. (respondent No.3 in the claim petition) to assail the award.

3. FAO No.9647 of 2014 has been filed by appellants Smt. Rajbala and others (claimants in the claim petition) for enhancement of the amount of compensation.

4. I have heard learned counsel for the parties and meticulously gone through the record of the case.

5. Learned counsel for the appellant-Insurance Company contended that there was no cogent evidence to prove that deceased was working as a driver. The learned Tribunal has wrongly taken the income of the deceased @ of Rs.6500/- per month. He was just a labourer and his income should not have been taken more than Rs.4000/- per month. He further contended that the future prospects should not have been added to the income of the deceased. Thus, he contended that the exorbitant amount of compensation has been awarded by the learned Tribunal.

6. On the other hand, learned counsel for the appellants-claimants contended that as per the record, deceased was drawing the salary at the rate of Rs.8000/- per month but the learned Tribunal has wrongly taken the income of the deceased to be Rs.6500/- per month. The income of the deceased should have been taken @ of Rs.8000/- per month. He further contended that no amount on account of love and affection has been awarded to the mother of the deceased and only Rs.1,00,000/- has been awarded to the three children of the deceased. Thus, he contended that the Tribunal has not awarded the just compensation.

7. I have duly considered the aforesaid contentions.

8. As per the case of the appellants-claimants, deceased Devender was working as a driver with The Khanpur Kalan Cooperative Transport Society Ltd., Sonapat. The claimants have examined Jaibir as PW-4. He has brought the summoned record pertaining to the employment of deceased Devender Singh as a driver with the said transport society w.e.f. 01.07.2009 to 01.02.2012. He deposed that Devender Singh was drawing Rs.8000/- per month as salary. He proved the salary certificate Ex.P2. In the cross-examination, PW-4 admitted that the salary of the deceased has been shown as Rs.6500/- per month, but he was being paid Rs.1500/- per month as TA/DA i.e. Rs.50/- per day. The learned Tribunal has rightly excluded this amount of TA/DA and has taken the salary of the deceased to be Rs.6500/- per month. Thus, I do not find any fault with the income of the deceased determined by learned Tribunal to be Rs.6500/- per month.

9. Keeping in view the age of the deceased, the learned Tribunal has awarded 30% of the future prospects towards the income of the deceased. I do not find any substance in the plea raised by the learned counsel for the appellant-Insurance Company that the future prospects were not admissible towards the income of the deceased. From the evidence on record, it comes out that deceased was employed as a driver with the Khanpur Kalan Cooperative Transport Society Ltd., Sonapat. He was a skilled person. His income was likely to be appreciated with the passage of time. Moreover, the Hon'ble Apex Court in cases ***Rajesh and others Vs. Rajbir and others 2013(3) RCR (Civil) 170*** and ***Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) PLR 304***, has laid down that the future prospects are admissible even to the income of a self-employed person. So, the learned Tribunal has rightly awarded 30% future prospects towards the income of the deceased.

10. The learned Tribunal has not awarded any amount towards loss of love and affection to claimant No.5, the mother of the deceased. As per the law laid down in case ***Vimal Kanwar and others Vs. Kishore Dan and others 2013 (2) RCR (Civil) 945***, the mother of the deceased shall be entitled to a sum of Rs.1,00,000/- as compensation on account of loss of love and affection of her son.

11. The learned Tribunal has already awarded Rs.1,00,000/- on account of loss of love and affection to the three minor children of the deceased. The learned counsel for the claimants have contended that Rs.1,00,000/- should have been awarded to each child, but in case ***Rajesh and others Vs. Rajbir and others*** (supra), there were three minor children

of the victim. The three Judges Bench of the Hon'ble Apex Court has awarded Rs.1,00,000/- on account of loss of care and guidance to the minor children. In view of the aforesaid ratio of law, no fault can be found with the sum of Rs.1,00,000/- awarded by the learned Tribunal on account of loss of love and affection to the minor children of the deceased.

12. In this manner a sum Rs.1,00,000/- on account of loss of love and affection to claimant No.5, the mother of the deceased, is awarded and consequently, the amount of compensation is enhanced from Rs.13,93,750/- to Rs.14,93,750/-.

13. Thus, keeping in view my aforesaid discussion, FAO No.8978 of 2014 filed by appellant-Insurance Company is without any merits and same is hereby dismissed. FAO No.9647 of 2014 filed by appellants-claimants is hereby partly allowed. The amount of compensation is enhanced to Rs.14,93,750/- from Rs.13,93,750/- as awarded by the learned Tribunal. The claimants shall be entitled to interest on the enhanced amount from the date of filing the petition till realisation thereof at the rate, as awarded by the learned Tribunal. The liability to pay the enhanced amount shall remain as determined by the learned Tribunal in the main award.

22.03.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**