IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.11.2017
FAO No.4905 of 2002 (O&M)

Savitri Devi and others ...Appellants

Versus

State of Haryana and others ...Respondents

FAO No.4906 of 2002 (O&M)

Mukesh ...Appellant

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Subhash Goyal, Advocate for the appellants.

Mr. Pramjeet Singh, AAG, Haryana.

Mr. K.S. Dhanora, Advocate for respondent No.3.

Mr. Pradeep Kumar, Advocate for the insurance company.

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<u>REKHA MITTAL, J. (Oral)</u>

This order will dispose of FAO Nos.4905 and 4906 of 2002 as these have emerged out of the same award dated 05.08.2002 passed by the Motor Accidents Claims Tribunal, Hisar (hereinafter to be referred as 'the Tribunal') whereby compensation has been assessed in regard to death of Jaggar Singh and injuries to Mukesh in a motor vehicular accident that took place on 27.11.2000.

FAO No.4905 of 2002

The claimants are in appeal seeking enhancement of compensation in regard to death of Jaggar Singh in the aforesaid accident.

The Tribunal has allowed compensation to the tune of Rs.3,30,000/-, detailed hereunder:-

Monthly income of the deceased	Rs.3,000/-
Deduction for personal expenses	$1/3^{rd}$
Multiplier	13
Loss of dependency	Rs.3,000 x 12 x 13 – $1/3^{rd}$ (thereof) = Rs.3,12,000/-
Funeral expenses	Rs.8,000/-
Transportation charges	Rs.5,000/-
Loss of love and affection	Rs.5,000/-
Total	**Rs.3,30,000/-**

Counsel for the claimants would urge that the deceased was engaged in agricultural operation and dairy farming thereby earning Rs.10,000/- per month but the Tribunal has assessed his income at Rs.3,000/- per month. The Tribunal has not allowed addition in income for future prospects. The Tribunal has wrongly applied cut of $1/3^{rd}$ for personal expenses and multiplier of 13 in place of an appropriate deduction and multiplier in the light of judgment of Hon'ble the Supreme Court **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company, on the contrary, would urge that the claimants failed to produce satisfactory much less cogent evidence to substantiate their plea with regard to avocation and income of the deceased. The Tribunal has assessed income of the deceased at Rs.3,000/- per month by taking into consideration wage of a labour but at the relevant time, minimum wage of an unskilled labour was approximately Rs.2,000/- per month.

The Tribunal in Para 16 has adverted to plea of the claimants and so also the evidence adduced by them in respect of avocation and income of the deceased. Except oral statement of Savitri, widow of the deceased, there is no evidence on record that the deceased was engaged in agricultural operation or dairy farming. Under the circumstances, income of the deceased is to be assessed on the basis of daily wage of an unskilled labour. As per the notification issued by the State of Haryana fixing minimum wage for different categories of worker, income of the deceased is assessed at Rs.2,000/- per month.

The Tribunal has applied cut of 1/3rd for personal expenses and multiplier of 13 to compute loss of dependency. The application for compensation was filed by the widow, two children and mother of the deceased, held entitled to get compensation. Under the circumstances, admissible deduction for personal expenses would be 1/4th. The deceased was 35 years old at the time of occurrence, therefore, multiplier of 16 is admissible in the light of enunciation laid down by Hon'ble the Apex Court in Sarla Verma's case (supra). The claimants shall be entitled to increase in income for future prospects to the extent of 40% in the light of latest judgment of Constitution Bench **National Insurance Company Limited Vs. Pranay Sethi and Ors.** Special Leave Petition (Civil) No. 25590 of 2014, decided on 31.10.2017. In this view of the matter, loss of dependency comes to Rs.2,000 x 12 x 16 + 40% (future prospects) - 1/4th (deduction for personal expenses) = Rs.4,03,200/-. The claimants shall be entitled to following compensation under conventional heads:-

Loss of consortium to the widow	Rs.40,000/-
Expenses on funeral	Rs.10,000/-
Loss of estate	Rs.10,000/-
Total	**Rs.60,000/-**

The total compensation comes to Rs.4,63,200/- and the additional amount is Rs.1,33,200/- (4,63,200 – 3,30,000). The additional amount shall carry interest @7.5% per annum from the date of petition till realization payable to widow of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No.4906 of 2002

The Tribunal has assessed compensation to the tune of Rs.39,906/- in respect of the injuries sustained by Mukesh, detailed hereunder:-

Medical expenses	Rs.25,706/-
Loss of income during period of treatment	Rs.1200/-
Pain and sufferings	Rs.5,000/-
Special diet	Rs.4,000/-
Transportation charges	Rs.4,000/-
Total	**Rs.39,906/-**

Counsel for the appellant has submitted that the Tribunal has not awarded any compensation qua disability suffered by the injured. Compensation for loss of income is inadequate and liable to be enhanced.

Counsel representing the insurance company, on the contrary, would state that in absence of any assessment made by a medical board with regard to disability to the injured victim, the Tribunal has rightly discarded claim in this regard.

The Tribunal has allowed reimbursement of medical expenses on the basis of bills produced on record. Dr. Vijay Kumar, Neuro Surgeon, CMC Hospital, Hisar appeared in the witness box to depose qua nature of injuries sustained by the victim and treatment given to him in the hospital and marked as exhibits documents Exs.P2 to P6. He has further deposed that mental faculty of the victim will not become 100% perfect. As per testimony of the doctor, injured victim was examined in the hospital for the last time on 20.01.2001 whereas admittedly he sustained injuries on 27.11.2000. The injured did not appear before a medical board in order to prove that injuries have rendered him disable to any extent whatever. Under the circumstances, it is difficult to uphold plea that the victim has suffered disability. That being so, injured cannot press his claim for grant of compensation qua disability.

The Tribunal has awarded a sum of Rs.1200/- for loss of earning by assessing income of the victim at Rs.3000/- per month. In view of findings recorded in FAO No.4905 of 2002, income of the victim is assessed at Rs.2000/- per month. Dr. Vijay Kumar, PW4 has deposed that the injured sustained moderately severe head injury i.e. frontal contusion and difused brain swelling, longitidual fracture of right temporal bone. The injured was discharged from the hospital on 04.12.2000 but he went to the hospital for follow-up treatment on 11.12.2000, 20.12.2000 and 20.01.2001, evidenced by OPD slips Exs.P3 to P5. Taking into consideration nature of injuries sustained coupled with the follow-up treatment of the victim in the hospital, ends of justice would be met if the injured is allowed loss of income at least for a period of three months. The claimant shall be entitled to Rs.6000/- for loss of income during the period of treatment and recovery. He is awarded an amount of Rs.3000/- qua service of an attendant. The additional amount of Rs.7800/- shall be payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

08.11.2017 **(REKHA MITTAL)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No
Whether reportable: Yes / No