IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.739 of 1994 (O&M)
Date of decision: 25.09.2017

Vijay Kumar ...Appellant

Versus

Madan Lal and others ...Respondents

FAO No.740 of 1994 (O&M)

Nanki Devi and others ...Appellants

Versus

Madan Lal and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vinod Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent-Insurance Company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.739 and 740 of 1994 as these have emerged out of the same award dated 22.10.1993 passed by the Motor Accidents Claims Tribunal, Karnal whereby compensation has been awarded in regard to injuries sustained by Vijay Kumar and death of Krishan Lal in a motor vehicular accident that took place on 26.11.1989.

FAO No.739 of 1994 has been filed by injured Vijay Kumar for enhancement of compensation whereas FAO No.740 of 1994 has been filed by Nanki Devi and others for enhancement of compensation on account of death of Krishan Lal.

FAO No.739 of 1994

The Tribunal has awarded an amount of Rs.74,500/- in respect of injuries sustained by Vijay Kumar, detailed hereunder:-

1. Compensation for medical treatment, special diet, transportation, attendant etc. - Rs.20,000/-

2. Loss of earnings for a period of 3 months @ Rs.1500/- per month. - Rs.4500/-

3. Compensation qua permanent disability to the extent of 40%. - Rs.40,000/-

4. Pain and Sufferings and Amenities of Life - Rs.10,000/-.

Counsel for the appellant has submitted that the injured victim remained hospitalised for a period of 53 days, recorded in Para No.27 of the award. He suffered permanent disability to the extent of 40% as per medical certificate Ex.PC issued by the Senior Medical Officer, Panipat. It is argued that in view of 40% permanent disability suffered by the injured, he is entitled to compensation for loss of future income by adopting multiplier of 9. It is further argued that compensation awarded under other heads is liable to be enhanced.

Counsel representing the insurance company, on the contrary, has supported the assessment made by the Tribunal on the premise that the claimant did not examine the doctor who issued the medical certificate Ex.PC with regard to disability to the extent of 40%. Further argued that there is nothing on record suggestive of the fact that disability to the extent of 40% is qua the whole body, to be taken as functional disability for assessing loss of future income by applying multiplier method.

I have heard counsel for the parties, perused the paper book, particularly the award.

There is no dispute that the claimant remained hospitalised in three different hospitals and his longest stay was for a period of 40 days in the hospital at Panipat, proved by PW1 Dr. Bharat Bhushan Gupta. The claimant produced on record documents Marked Ex.P1 to P46 as an evidence of expenditure to the tune of Rs.14,340/- on medical treatment. The Tribunal has awarded an amount of Rs.20,000/- for expenses on medical treatment, special diet, transportation, attendant etc. out of which an amount of Rs.14,340/- pertains to expenses of medical treatment. The occurrence in question is of November, 1989. Taking into consideration period of treatment in the hospital, interest of justice would be served if the claimant is allowed additional amount of Rs.10,000/- under the head of medical treatment, special diet, transportation and attendant etc.

The Tribunal has awarded an amount of Rs.4500/- for loss of income for a period of three months. The injured victim remained hospitalised for a period of 53 days; he must have taken some more time to recover after discharge from the hospital. He is awarded compensation for loss of income for a period of four months for treatment and recovery and accordingly he would be entitled to additional amount of Rs.1500/- for loss of income under this head.

In Para No.29 of the award, there is reference to medical certificate Ex.PC. The records of the case got burnt in a fire incident. Counsel for the appellant is not in a possession to supply copy of the medical certificate Ex.PC for perusal and consideration. However, he has fairly conceded that the claimant would be satisfied if he is awarded compensation for the disability @ Rs.2000-/ per percent. Counsel for the insurance company has not made any serious dispute in this regard. Accordingly, the claimant is held entitled to an amount of Rs.80,000/- qua disability and the additional amount under this head is Rs.40,000/-.

An amount of Rs.10,000/- has been awarded for pain and sufferings and loss of amenities of life. Taking into consideration the period of treatment as an indoor patient coupled with the extent of disability suffered on account of sustaining injuries in the occurrence, claimant is awarded an amount of Rs.25,000/- for pain and sufferings and loss of amenities of life and the additional amount under this head is Rs.15,000/-.

In view of the above, additional amount comes to Rs.66,500/-, payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.740 of 1994

The Tribunal has awarded an amount of Rs.1,92,000/- in regard to death of Krishan Lal detailed hereunder:-

Monthly loss of income	- Rs.1500
Deduction for personal expenses	- 1/3rd
Multiplier	- 16

Loss of dependency - 1000 x 12 x 16 = 1,92,000/-

The Tribunal has not allowed benefit of increase in income for future prospects to the extent of 50% as the deceased was 27 years old at the time of occurrence. Counsel for the appellants has relied upon judgment of Hon'ble the Supreme Court of India **Rajesh and others Vs.Rajbir Singh and others, (2013) 9 SCC 54**, for pressing their claims in this regard.

Counsel representing the insurance company has disputed entitlement of the claimants for future prospects on the premise that the matter is under consideration before a larger bench of Hon'ble the Supreme Court in view of reference made in **National Insurance Company Ltd. Vs. Pushpa,** (SLP (c) No.16735 of 2014).

The deceased died at a young age of 27 years leaving behind his widow, minor daughter and widowed mother. There is nothing on record suggestive of the fact that Krishan Lal (deceased) suffered from any disability impairing his capacity to work and earn livelihood for himself and his family. It is difficult to accept that the deceased would have stagnated at income of Rs.1500/- per month, had he remained alive. I stand fortified in my observations from the fact that State Governments revise minimum wages at short intervals i.e. quarterly or bi annually. Under the circumstances, the mere fact that a reference is pending before a larger bench of Hon'ble the Supreme Court is not sufficient to deny benefit of future prospects till judgment in **Rajesh's case (supra)** is varied or set aside.

The Tribunal has applied a multiplier of 16 for computing loss of dependency. There is no dispute that the deceased was 27 years old at the time of occurrence. In the light of enunciation laid down in **Sarla Verma & Ors vs Delhi Transport Corp. & Anr, 2009 (3) RCR (Civil) 77**, appropriate multiplier, in the given circumstances, would be 17. After applying multiplier of 17 and benefit of future prospects to the extent of 50%, loss of dependency comes to Rs.1500 x 12 x 17 + (50% thereof towards future prospects) – (1/3 rd. deduction for personal expenses) = Rs.3,06,000/-.

Under conventional heads, the Tribunal did not allow any compensation to the claimants. The claimants shall be entitled to following compensation under conventional heads:-

1	Loss of consortium to the widow	Rs.50,000/-
2	Loss of love and affection to the minor daughter	Rs.50,000/-
3	Loss of love and affection to the mother	Rs.25000/-
4	Expenses on funeral and last rites	Rs.10,000/-
5	Loss of estate	Rs.10,000/-
	Total	Rs.1,45,000/-

The total compensation is calculated at Rs.4,51,000/- and the additional amount is Rs.2,59,000/-. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization, payable to the widow and daughter of the deceased except loss of love and affection granted to the mother. The amount falling to share of the daughter shall be deposited in FDR for a period of three years.

The appeal is partly allowed in the aforesaid terms.

25.09.2017 **(REKHA MITTAL)**
ashok **JUDGE**

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