

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

Date of decision: 8.8.2017

1.

FAO No.1441 of 1997(O&M)

Smt. Beena Chobey and others

.....Appellants

VERSUS

Tilak Rak and others

.....Respondents

2.

FAO No.1191 of 1997(O&M)

Bhaskaran Puthussery

.....Appellant

VERSUS

Tilak Rak and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajbir Singh, Advocate and
Mr. C.B. Goel, Advocate for the appellants.

Ms. Amrita Nagpal, Advocate for
Mr. Lokesh Sinhal, Advocate for respondent No.2.

Mr. Sanjiv Pabbi, Advocate for respondent No.3.

REKHA MITTAL, J. (Oral)

This order shall dispose of FAO Nos.1441 and 1191 of 1997 as these have emerged out of the same award dated 22.03.1997 passed by Motor Accidents Claims Tribunal, Gurgaon (in short 'the Tribunal').

For the sake of convenience, facts are taken from FAO No.1441 of 1997 wherein the claimants are in appeal seeking enhancement

of compensation in regard to death of Raj Narain Chobey in a motor vehicular accident that took place on 01.09.1994.

The Tribunal assessed income of the deceased at Rs.3534/- per month, deducted 1/3rd towards personal expenses, adopted a multiplier of 16 to compute loss of dependency to the tune of Rs.4,51,968/- payable with interest at the rate of 12% per annum from the date of petition till realization.

Counsel for the appellant has asserted claim for enhancement of compensation on several counts. It is argued that as the deceased left behind his widow, three minor children and mother (claimants), admissible deduction is 1/4th.

The deceased was working as Hawaldar in the Army, therefore, compensation is to be assessed by allowing benefit of increase in income for future prospects to the extent of 50% in view of enunciation laid down by Hon'ble the Supreme Court **Smt. Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77.** The Tribunal has not awarded any compensation under conventional heads.

Counsel representing the insurance company would urge that that as the deceased was held to be 36 years of age, appropriate multiplier would be 15 in place of 16.

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

The application for compensation was preferred by the widow, three minor children and mother of the deceased, held to be dependent upon his earning. That being so, admissible deduction would be 1/4th in place of 1/3rd. The Tribunal has adopted a multiplier of 16 but the

same should be 15 as the deceased was in the age bracket of 36-40 years. The Tribunal has not allowed benefit of future prospects. In the light of enunciation laid down in **Smt. Sarla Verma's case** (supra), the appellants are entitled to increase in income for future prospects to the extent of 50%. In this manner, loss of dependency comes to Rs.6,36,120/-[Rs.6,36,120/- (Rs.3534 x 12 x 15) + Rs.3,18,060/- (50% future prospects) – Rs.3,18,060/- (1/3rd deduction towards personal expenses)].

Under conventional heads, the appellants are awarded an amount of Rs.50,000/- for loss of consortium to the widow, Rs.1,00,000/- for loss of love and affection to the children, Rs.20,000/- for loss of love and affection to the mother, Rs.15,000/- for expenses on funeral and a sum of Rs.25,000/- for loss of estate.

In view of the above, total compensation comes to Rs.8,46,120/- and the enhanced compensation is Rs.3,94,152/- (Rs.8,46,120/- - Rs.4,51,968/-). The enhanced compensation shall carry interest at the rate of 7.5% per annum from the date of petition till realization, payable exclusively to widow of the deceased.

FAO No.1191 of 1997

P. Bhaskaran, the injured/claimant, has been awarded Rs.70,000/- on account of injuries, pain, sufferings and mental shock under general damage. Another amount of Rs.5,000/- has been awarded under special damages making total compensation to the tune of Rs.75,000/-, payable with interest at the rate of 12% per annum from the date of petition till realisation.

Counsel for the appellant has submitted that the right arm and right leg of injured were fractured and injuries were also sustained on his stomach. He got treatment from various hospitals like Civil Hospital,

Gurgaon, Army Hospital, Delhi, Base Hospital and Poona Hospital. It is further submitted that injuries sustained in the occurrence rendered him disable to the extent of 30% as proved by Dr. Akhlak Ahmed, SMO, Civil Hospital, Gurgaon (PW-8). According to counsel, the Tribunal has not awarded any compensation for loss of income either during the period of treatment or in future owing to 30% disability suffered by the claimant. Compensation awarded under non-pecuniary heads needs addition/enhancement.

Counsel representing the Insurance Company would urge that the injured has failed to prove that due to sustaining of injuries, he either incurred any expense on his treatment or suffered any loss of income in any manner whatever. The claimant did not examine any witness from his department i.e. Army to prove that due to absence from duty owing to injuries, he was not paid salary. Similarly, no evidence has been adduced that due to disability to the extent of 30%, he has either suffered any loss of promotion or income. It appears that as the injured was working in Army, his treatment was free of costs. As has been rightly argued by counsel for the insurance company, no evidence has been adduced by the claimant with regard to loss of income either during treatment due to absence from duty or subsequent thereto because of disability suffered by him. At the same time, Dr. Akhlak Ahmed (PW-8) was examined to prove disability certificate Ex.PW8/1. As per disability certificate, disability is $15\% + 7\frac{1}{2}\% + 7\frac{1}{2}\% = 30\%$ on account of moderate restriction of movements at right shoulder and mild restrictions of movements at the right hip and right knee. In the concluding line of cross examination, the witness has deposed that disability cannot be reduced with passage of time.

In view of nature and extent of disability suffered by the claimant which

would carry on till he lives, claimant is entitled to compensation for loss of amenities of life. In the light of facts and circumstances brought on record, claimant is awarded additional amount of Rs.30,000/- towards general damages including loss of amenities of life. The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realisation.

The appeals are partly allowed in the aforesaid terms.

AUGUST 8, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no