IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3764 of 2005 (O&M)
Date of Decision:19.07.2017

Ram Devi

..Appellant(s)

Versus

Sonu and others

..Respondent(s)

with

FAO No.3781 of 2005 (O&M)

Rajbir Singh

..Appellant(s)

Versus

Kitab Singh and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sunil Dhanda, Advocate for
Mr. Rajesh Lamba, Advocate
for the appellant in FAO-3764-2005.

Mr. Amit Prashar, Advocate
for the appellant in FAO-3781-2005.

Mr. Gopal Mittal, Advocate
for the insurance company.

Mr. Jagdeep Singh Rana, Advocate for
Mr. Vinod S. Bhardwaj, Advocate for
for respondents no.1 & 2 in FAO-3764-2005 and
for respondent nos.4 to 5 in FAO-3781-2005.

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ANITA CHAUDHRY, J.

These are two appeals arising out of the award dated 20.04.2005, passed by the Motor Accident Claims Tribunal, Fatehabad. Four claim petitions were filed, which were consolidated and a common award was passed.

An accident occurred on 16.08.2002. Surender, Rameshwari, Rajbir and Harpal were travelling in a jeep and were going towards Bhuna. When they reached near the T point, a tractor came from village Chamar Khedi and collided with the jeep and the jeep turned turtle. The occupants of the jeep sustained injuries. Ram Devi filed the claim petition seeking compensation for death of her un-married son Surender. The claim petition had been filed under Section 163-A of the Motor Vehicle Act. It was claimed that the deceased was a mason and used to earn Rs.40,000/- per annum. The Tribunal noted that Ram Devi in her statement in the Court had stated that her son was earning Rs.4,000/- per month but there was no supporting evidence and the income of the deceased was taken as that of a labourer and assessed at Rs.18,000/- per annum. Since Surender was unmarried, the age of the mother was taken into consideration and multiplier of 5 was applied. A sum of Rs.2,000/- was awarded for funeral expenses. Aggrieved by the award this appeal has been preferred by Ram Devi.

The second appeal is by Rajbir, age 25 years had suffered injuries in the accident. He had stated that he remained admitted in the hospital for 15 days and had spent Rs.1 lac on his treatment and had still not recovered. He claimed that he was doing agricultural work and was cultivating 12 acres of land owned by Ami Lal and used to earn Rs.90,000/- per annum. He had pleaded that he had become permanently disabled. The Tribunal noted that there was disability to the extent of 18% on account of traumatic weakness in the left hip and right knee and ankle. It was found that the medical bills submitted were only to the tune of Rs.28,700/-. The Tribunal held that a claim of Rs.15,000/- alone could be allowed for the medical expenses as the petition had been filed under Section 163-A of the Motor Vehicle Act. His income was taken as Rs.1,500/- per month since there was no evidence that he was cultivating any land or had that income and taking the loss at Rs.200/- per month the total loss per year was taken as Rs.2,400/- and the multiplier of 17 was applied and the compensation was assessed at Rs.40,800/-. A total claim of Rs.60,800/- was allowed which included Rs.5,000/- for pain and suffering.

Counsel for the appellant Ram Devi urges that though Ram Devi had stated that her son was earning Rs.4,000/- per month but it was ignored as there was no evidence and a claim should have been allowed taking the income to be Rs.40,000/- per annum, which is the maximum amount on which a claim under Section 163-A of the Motor Vehicle Act could be filed but the Tribunal had wrongly taken the income to be Rs.18,000/- per month and the minimum wages in 2002 were more than Rs.2,500/-. It was urged that only a sum of Rs.2,000/- had been allowed for funeral expenses and no amount had been given for loss to the estate.

The submission on behalf of the insurance company was that the income had been rightly assessed and 1/3rd deduction should have been made and the Tribunal had wrongly applied the multiplier on the income without making a deduction. It was urged that since the claim had been filed under Section 163-A, therefore, the amount as provided in the IInd Schedule could only be given. Counsel further contends that the Tribunal had given them recovery rights which be maintained.

Though the claimant Ram Devi had pleaded that the deceased was an agriculturist and was cultivating land but no evidence was produced. The minimum wages in August, 2002 stood at Rs.2,140/- per month and the annual income would come to Rs.25,680/-. The Tribunal had taken the annual income at Rs.18,000/-. I would make the calculations taking the annual income to be Rs.25,680/-. Ram Devi had given her age as 60 years at the time of her deposition. Therefore, the multiplier which would be applicable would be 5 and the calculation will have to be made again. The deceased was un-married. The deduction would be 1/3rd as per the IInd Schedule and the compensation would be Rs.17,120 x 5 = Rs.85,600/-. The accident had taken place in 2002, therefore I would award Rs.2,000/- as funeral expenses and Rs.2,500/- for loss of estate, raising the total to Rs.90,100/-. The appellant is also allowed litigation expenses of Rs.5,000/- raising the total to Rs.95,100/-. The Tribunal had awarded Rs.90,000/-, which would be deducted and the remaining amount would be payable to Ram Devi with interest @ 6% from August 2005 till realization. The amount would be payable firstly by the insurance company as ordered by the Tribunal and the insurance company will be entitled to recover the amount from the owner.

Now coming to the appeal filed by Rajbir, the Tribunal had noted that Rajbir remained admitted in the hospital for 1½ month. The medical bills on the record were to the tune of Rs.28,700/- but the Tribunal held that the claimant was entitled to a sum of Rs.15,000/- as provided in the IInd Schedule. With respect to the disability, the income was assessed as Rs.1,500/- taking that of a labourer. The Tribunal had noted that the disability was to the extent of 18% and taking the loss at Rs.200/- the multiplier of 17 was applied to calculate the loss. The minimum wages in 2002 were Rs.2,140/-, therefore, I would take the income to be Rs.2,140/- per month (actual) as it stood on 01.07.2002. There was a disability to the extent of 18% and making the calculations, the loss would be Rs.385/- and and the total amount for the disability would be Rs.385 x 12 x 17 = Rs.78,540/-.

It has been settled by now that the restriction provided in IInd Schedule with respect to the limit would not be applicable and the injured-claimant would be entitled to the actual amount spent on the medicines, therefore, the amount payable to the injured would be as under:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Medical Bills (actual)	Rs.28,700/-
2.	Disability	Rs.78,540/-
3.	Pain and suffering	Rs.5,000/-
4.	Litigation expenses	Rs.5,000/-
	TOTAL	**Rs.1,17,240/-**

The Tribunal had allowed Rs.60,800/-, which would be deducted and the remaining amount would be payable to the injured-appellant Rajbir with interest @ 6% from August 2005 till realization. The amount would be firstly paid by the insurance company and they will be entitled to recover the amount.

Both the appeals are partly allowed.

July 19, 2017 **(ANITA CHAUDHRY)**
sunil **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No