

FAO No. 1207 of 2011 (O&M)

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

Date of Decision: 4.12.2017

(i) FAO No. 1207 of 2011 (O&M)

Paramjit Kaur and another

.....Appellants

Versus

Kuldip Singh and others

.....Respondents

(ii) FAO No. 4640 of 2010

United India Insurance Company Limited

.....Appellant

Versus

Paramjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. N.S. Kandhola, Advocate for
appellants in FAO No. 1207 of 2011 and
for respondents No. 1 and 2 in FAO No. 4640 of 2010.

Mr. D.P. Gupta, Advocate
for Insurance Company.

AVNEESH JHINGAN, J.

These are two F.A.O.s, filed by the Insurance Company as well as the claimants against the award dated 3.5.2010 passed by the Motor Accidents Claims Tribunal, Gurdaspur (for short 'the Tribunal').

The issue involved in both the appeals is regarding compensation to be awarded to the legal heirs of Kulwant Singh, who died in a motor vehicular accident on 9.4.2007. Kulwant Singh was travelling in a bus bearing registration No. PB-13-M-1907. The said bus was being driven rashly and negligently. The bus struck the motor cycle bearing

registration No. PB-18-H-1635, as a result of which the driver of bus lost

control and the bus struck to a safeda tree, due to which Kulwant Singh, lost his life. FIR No.58 dated 9.4.2007 was registered at Police Station Sadar, Gurdaspur. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by the widow and daughter of the deceased. The Tribunal awarded a sum of Rs.5,55,000/- alongwith interest at the rate of 6% per annum.

I have heard learned counsel for the parties and perused the paper book and record.

Learned counsel for the Insurance Company has argued that the Tribunal has erred in relying upon the Income tax return filed for the assessment year 2004-05. He contended that the deceased was 52 years of age as per the post-mortem report and even in the claim petition he was claimed to be 50 years of age and the Tribunal erred in taking his age as 45 years. He has challenged the deduction made for self expenses also. He argued that there were two dependents and 1/3rd deduction should have been made.

Learned counsel for the claimants argued that the Tribunal has erred in relying upon the return filed for the assessment year 2004-05 whereas the accident occurred in the year 2007. He said that the claim was made that the deceased was earning Rs.50,000/- per month. He further contended that the amount awarded under conventional heads are on the lower side.

Since, both the parties are dis-satisfied with the calculation of compensation made, it would be appropriate if the compensation is recalculated taking in view the facts of the case.

A perusal of the record shows that in the post-mortem report,

age of the deceased was given as 52 years whereas in the claim petition the age of the deceased was mentioned as 50 years. In her statement, the widow deposed that the age of her husband was 54 years. In such circumstance, it would be appropriate to take the age of the deceased as 52 years and to apply the multiple of 11, as per decision of Hon'ble the Apex Court in **Sarla Verma and others Vs. Delhi Transportation Corporation and another (2009)6 SCC 121**, when the age of deceased is 51 to 55, multiplier of 11 has to be applied. The deceased was survived by two dependents. Hon'ble the Apex Court in **Sarla Verma's case (supra)** has held that where the dependents are 1 to 3, 1/3rd deduction have to be made for self expenses.

So far as the income of the deceased is concerned, though it was claimed that he was earning Rs.50,000/- per month but the fact which cannot be ignored is that only document with regard to assessment year 2004-05 was produced as Mark'A' and no return for the assessment years 2005-06, 2006-07 and 2007-08 were produced. In such circumstance, it cannot be said that the claimants were able to establish that deceased was earning Rs.50,000/- per month.

The contention raised by learned counsel for the Insurance Company that the Tribunal erred in relying upon the income tax return for the assessment year 2004-05, cannot be accepted. A perusal of Mark 'A' on record will show that it was not a return for the assessment year 2004-05, rather it was assessment order under Section 143 (1) of the Income Tax Act, 1961. In the said order the annual income was taken as Rs.52,050/- and the amount of Rs. 190/- was refund of Tax. There is no dispute raised with regard to genuineness of the assessment order. It was claimed in the claim petition that the deceased was running a factory. Though no document was

produced on record to show that he was running a factory, but in such circumstance, the assessment order of the Income Tax cannot be ignored. The Income is taken as per the assessment order for the assessment year 2004-05 as Rs.52,050/- less income-tax is deducted of Rs.215/-. (52050 – 215 = 51835). The same is rounded off to Rs. 51800/-. Less 1/3rd deduction =17267/- (51800-17267 =34533) and by applying multiplier of 11, amount comes to Rs. 3,79,863/- (34,533 x 11 = 3,79,863/-)

The claimants would be entitled to amount under the conventional heads as laid down by the decision of Hon'ble the Supreme Court in **National Insurance Company Limited Versus Pranay Sethi and others Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.** The amount of Rs.15,000/- is awarded for funeral expenses, Rs.15,000/- is awarded for loss of estate and Rs.40,000/- is awarded for loss of consortium.

The award dated 3.5.2010 is modified to the extent that the amount awarded of Rs.5,55,000/- is reduced to Rs. 4,49,863/-.

Both the appeals are partly allowed in the above said terms.

4.12.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No