IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3397 of 2012(O&M)
Date of Decision: November 15, 2017

Kallu & others **...Appellants**

Versus

Dharmender Singh and others **...Respondents**

FAO No. 3779 of 2012(O&M)

National Insurance Company **...Appellants**

Versus

Kallu and others **...Respondents**

CORAM:- HON'BLE MR. JUSTICE B.S. WALIA.

Present:- Ms. Ekta Thakur, Advocate for the appellants in FAO No.3397 of 2012.

Mr.Ashwani Talwar, Advocate for Insurance Company.

Mr. Rajdeep Singh Cheema, Amicus Curiae for respondents No.1 to 4 in FAO No.3779 of 2012.

****

B.S. WALIA, J. (Oral)

1. This order shall dispose of FAO No. 3397 of 2012 filed by the father

and two minor siblings of deceased Jauni who died in an accident on 06.12.2009, in which the deceased's mother, Rajwati also died. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal) by assessing the income of the deceased @ ₹3,000/- per month and making deduction of 50% on account of personal expenses, worked out dependency @ ₹18,000/- per annum and further applied multiplier of 15 and by awarding funeral expenses @ ₹3,000/- and ₹7,000/- towards loss of love and affection, awarded total compensation of ₹2,80,000/-.

2. FAO No. 3779 of 2012 has been filed by the Insurance company seeking reduction of the compensation awarded from ₹2,80,000/- to ₹2,34,500/-. Both the cases are taken up together for decision.

3. The main ground for seeking enhancement of compensation by the claimants-appellants is that despite the evidence of appellant-Kallu i.e. (father of the deceased) that the deceased was engaged as ragpicker and was contributing to the family by earning around ₹3300/- per month, the learned Tribunal in paragraph No.40 of the award without discussing the evidence, assessed the income of the deceased at ₹3,000/- per month and after deducting 50% as personal expenses of the deceased, worked out dependency @ ₹18,000/- per annum.

4. Learned counsel for the claimants-appellants contends that minimum

wages for labourer in the Union Territory, Chandigarh, during the year 2009 were ₹3914/- per month. Accordingly, taking into account the fact that the deceased was active, healthy and engaged as ragpicker, income was liable to be assessed at ₹3300/- per month. Besides, deduction of 50% was wrongly made and as per Note 1 to the Second Schedule to the Motor Vehicles Act,1988 (hereinafter referred to as the 'Act'), 1/3rd of the income of the deceased was to be deducted towards his personal expenses.

5. Per contra, learned counsel for the respondent-Insurance Company contended that the learned Tribunal had wrongly assessed the income of the deceased @ ₹3,000/- per month and the same ought to have been as per Note 6 to the Second Schedule to the Act which provides ₹15,000/- per annum as notional income in cases of those who are having no income prior to the accident.

6. I have considered the submissions of learned counsel for the parties.

7. No doubt the learned Tribunal has without discussing the evidence recorded a finding in paragraph No.40 of the award that the deceased was having income of ₹3000/- per month and by deduction of 50% on account of personal expenses of deceased, worked out dependency @ ₹18,000/- per annum. However, the fact remains that in paragraph No.3 of the

affidavit of Kallu (father of the deceased), produced before the learned Tribunal as Ex. PA on 28.02.2001, it has been categorically mentioned that the deceased was an active, working and healthy boy engaged in profession of ragpicking and was contributing to the family by earning around ₹3300/- per month. Therefore, it cannot be said that the deceased was not working and did not have any income. Accordingly, it is held that the deceased was engaged as a ragpicker.

8. Coming to the question of the amount of earning of the deceased, learned counsel for the claimants-appellants has contended that as per evidence led, the deceased was earning around ₹3300/- per month and the same should have been accepted by the Tribunal.

9**.** On the other hand, earning of the deceased is disputed by the learned counsel for the Insurance Company who contended that the deceased was a 13 years old child, therefore, the income as claimed by the claimants-appellants is on the higher side.

10. I have considered the submissions of learned counsel for the parties and am of the view that in the strata of society to which the deceased belonged, it is not uncommon for young children to be engaged in the task of ragpicking for earning and supplementing the family income particularly in view of their being other minor siblings in the family.

11. Taking all aspects of the matter into account, I am of the considered view that the income assessed by the Tribunal need not be disturbed. Accordingly, the findings of the learned Tribunal that the deceased was having an income of ₹3,000/- per month is sustained. However, deduction towards personal expenses of the deceased have to be worked out at @ 1/3rd of the income in terms of Note 1 to the Second Schedule to the Act and not at 50%. Accordingly, dependency is worked out at ₹26,400/- per annum as against ₹18,000/- per annum worked out earlier. Multiplier of 15 was correctly applied by the Tribunal on account of the deceased being 13 years of age. However, as against funeral expenses ₹3000/- and ₹7000/- towards loss of love and affection, i.e. total sum of ₹10,000/- awarded under conventional heads, the claimants-appellants would be entitled to ₹2,000/- towards funeral expenses and nil on account of loss of love and affection besides a sum of ₹2500/- towards loss of estate. The claimants-appellants would thus be entitled to a sum of ₹4500/- under conventional heads. Accordingly, the compensation of ₹2,80,000/- awarded to the claimants-appellants along with interest @ 6% per annum would now be ₹3,000 x 12 x 15 x 2/3rd + 4500/- =₹3,64,500/- along with interest @ 6% per annum with effect from the date of filing of the claim petition till the date of payment, less amount, if any, already paid.

12. Needless to mention that after making payment of the awarded compensation to the claimants-appellants, the Insurance Company would be at liberty to recover the same from the registered owner of the offending vehicle.

13. Appeals filed by the parties are disposed of as above.

(B.S. WALIA)
JUDGE

November 15, 2017
ps

Whether speaking/reasoned	*Yes/No*
Whether reportable	*Yes/No*