IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 12.09.2017

1. FAO No.10190 of 2014(O&M)

Shamindro ...... Appellant

Versus

Priya Vart and others ... Respondents

2. FAO No.2593 of 2016(O&M)

Parminder Kaur and another ...... Appellants

Versus

Priya Vart and others ... Respondents

3. FAO No.4758 of 2014(O&M)

Reliance General Insurance Company Ltd. ...... Appellant

Versus

Parminder Kaur and others ... Respondents

4. FAO No.7478 of 2014(O&M)

Parminder Kaur and another ...... Appellants

Versus

Priya Vart and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Gopera, Advocate
for the appellant(s) in FAO No.10190 of 2014 and
for respondents No.4 and 5 in FAO No.7478 of 2014,
FAO No.2593 of 2016 and
for respondents No.5 and 6 in FAO No.4758 of 2014.

Mr. Dinesh Rawat, Advocate
for the appellant(s) in FAO No.7478 of 2014,
FAO No.2593 of 2016 and

for respondents No.1 and 2 in FAO No.4758 of 2014 and for respondents No.4 and 5 in FAO No.10190 of 2014.

Mr. Vikas Sharma, Advocate for
Mr. R.K. Bashamboo, Advocate
for the appellant in FAO No.4758 of 2014 and
for respondent No.3 in FAO No.2593 of 2016, FAO No.7478 of 2014 and FAO No.10190 of 2014.

Mr. G.S. Sandhu, Advocate
for respondents No.1 and 2 in FAO No.10190 of 2014, FAO No.2593 of 2016, FAO No.7478 of 2014 and for respondents No.3 and 4 in FAO No.4758 of 2014.

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RAJ MOHAN SINGH, J.

Vide this common order, FAO No.10190 of 2014 titled Shamindro Vs. Priya Vart and others, FAO No.2593 of 2016 titled Parminder Kaur and another Vs. Priya Vart and others, FAO No.4758 of 2014 titled Reliance General Insurance Company Ltd. Vs. Parminder Kaur and others and FAO No.7478 of 2014 titled Parminder Kaur and another Vs. Priya Vart and others are being disposed of.

. Common facts in brief are that on 20.10.2011 Gurmej Singh along with his wife Parminder Kaur was returning on a motorcycle from Chandigarh to Panchkula. When they reached near house No.165, Sector-8, Chandigarh, the offending vehicle being driven in a rash and negligent manner struck against the motorcycle of Gurmej Singh. The offending vehicle was being driven by respondent No.1 in a rash and negligent manner with high speed. Both the occupants of the motorcycle fell down and suffered multiple injuries on their persons. Gurmej Singh died on account of injuries. Parminder Kaur (wife of the deceased) suffered multiple injuries on her person on account of accident.

Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal'). while deciding issue No.1 held that the accident took place due to rash and negligent driving of respondent No.1 i.e. driver of the offending vehicle.

1. FAO No.10190 of 2014(O&M)

CM No.28063-CII of 2014

For the reasons mentioned in the application, the same is allowed. The delay of 46 days in filing the present appeal is condoned.

Main case

In the present appeal preferred by mother of deceased Gurmej Singh, the only grievance is that the Tribunal has not awarded any compensation to the appellant towards loss of love and affection to her.

In view of law laid down in ***Smt. Neeta w/o Kallappa Kadolkar and others Vs. the Divn. Manager, MSRTC, Kolhapur, 2015(1) RCR (Civil) 625,*** the appellant is entitled to an amount of Rs.1,00,000/-towards love and affection.

In the light of aforesaid precedent, this appeal is disposed of by granting an amount of Rs.1,00,000/- to the appellant along with interest @ 7.5% from the date of filing of the claim petition till final realization of the amount. Liability to pay the aforesaid amount shall remain the same as held by the Tribunal in the main award.

2. FAO No.2593 of 2016(O&M)

Notice in the main appeal as well as in the application for condonation of delay.

Mr. G.S. Sandhu, Advocate accepts notice on behalf of respondent Nos.1 and 2. Mr. Vikas Sharma, Advocate for Mr. R.K. Bashamboo, Advocate accepts notice on behalf of respondent No.3 and Mr. G.S. Gopera, Advocate accepts notice on behalf of respondents No.4 and 5.

Learned counsel for the parties state that since connected appeals are listed today, the present appeal may also be heard along with connected appeals after condoning the delay.

Delay of 322 days in re-filing the appeal is accordingly condoned.

With the concurrence of the parties, this Court proceeded to decide the case on merits.

Learned counsel for respondent No.3 very fairly stated that there is no dispute regarding liability of Insurance Company, but the Insurance Company is aggrieved by the quantum of compensation awarded in favour of the claimants.

Deceased was 34 years of age. He was working as a Senior Lab Technician in Department of Blood Bank, Alchemist Hospital. Panchkula and was earning Rs.17,591/- per month on the basis of Senior Lab Technician. Besides the aforesaid assignment, he was also working as an agent in LIC and was earning about Rs.30,000/- per annum from LIC. The claimants are mother, widow and daughter of the deceased.

The Tribunal assessed the income of the deceased to be Rs.17591/- per month from the job of Senior Lab Technician in Alchemist Hospital, Panchkula in view of salary slips Exs.PW3/1 to PW3/3. An amount of Rs.30,000/- per annum was assessed towards commission from the LIC. In this manner, total annual income of the deceased was assessed to be Rs.2,41,092/- (2,11,092+30,000). Keeping in view the ratio laid down in ***Santosh Devi Vs. National Insurance Company, 2012 STPL (Web) SC 248***, an increase to the tune of 50% was applied in view of age of the deceased to be less than 40 years, therefore, the gross income of the deceased was assessed to be Rs.3,61,638/- i.e.[2,41,092+1,20,546/- (50% of the gross income)]. In view of ratio laid down in ***Smt. Sarla Verma and***

others Vs. Delhi Transport Corporation and another, 2009(3) Recent Apex Judgments 373, deduction to the tune of 1/3rd was applied towards personal expenses. After applying 1/3rd deduction from the income of the deceased towards personal expenses, the annual dependency of the claimants was assessed to be Rs.2,41,092/-. The Tribunal applied multiplier of 16 in view of age of the deceased on the basis of ratio laid down in ***Smt. Sarla Verma's case (supra)*** and in this way, the amount was assessed to be Rs.38,57,472/- (Rs.2,41,092 X 16). To the aforesaid amount of compensation, an amount of Rs.25,000/- towards funeral expenses, an amount of Rs.1,00,000/- towards consortium to the widow and an amount of Rs.1,00,000/- towards loss of care and guidance of minor daughter were added and the total amount was assessed to be Rs.40,82,472/-

Learned counsel for the appellants submitted that deceased was earning Rs.1500/- per month by working overtime and this fact has been proved by statement of PW3. Learned counsel further submitted that the income of previous year has been taken into consideration by ignoring the salary slips of the latest year and loss of love and affection has to be awarded in respect of each of the claimants besides granting consortium in favour of wife and funeral expenses.

The amount towards loss of consortium to the tune of Rs.1,00,000/- in favour of widow has been rightly awarded. An amount of Rs.25,000/- has also been rightly awarded towards funeral expenses. The claim with regard to overtime to the tune of Rs.1500/- per month has not been proved on record with reference to any uncontroverted evidence. Witness PW 3 in his cross examination admitted that he did not bring the relevant record vide which the factum of overtime payment could be established.

In view of above, I deem it appropriate not to take into consideration any alleged amount towards overtime done by the deceased, however, an amount of Rs.1,00,000/- can be considered towards loss of love and affection in favour of the claimants in view of ratio laid down in ***Smt. Neeta's case (supra)***. The claimants are mother, widow and daughter. Since an amount of Rs.1,00,000/- has already been considered towards loss of consortium in favour of widow by the Tribunal and an amount of Rs.1,00,000/- has already awarded to the mother of the deceased towards loss of love and affection in the connect appeal i.e. FAO No.10190 of 2014, therefore, an amount of Rs.1,00,000/- in favour of minor daughter towards loss of love and affection can be considered over and above the amount awarded by the Tribunal.

In view of above, this appeal is disposed of by granting an amount of Rs.1,00,000/- to the minor daughter along with interest @ 7.5% from the date of filing of the claim petition till final realization of the amount. Liability to pay the aforesaid amount shall remain the same as held by the Tribunal in the main award.

3. FAO No.7478 of 2014(O&M)

Claimant/Parminder Kaur is the wife of the deceased who has received injuries in the accident. Though the claimant was a qualified Journalist, but at the time of accident, she was a house wife.

The Tribunal has awarded an amount of Rs.47,000/- towards medical expenses and an amount of Rs.50,000/- towards special diet, transportation, pain and sufferings, attendant charges and mental agony etc. In this way, the total amount of Rs.97,000/- has been awarded as compensation to the injured claimant.

As per medical evidence available on record viz. Ex.PW4/2, Ex.PW4/15 to Ex.PW4/18 and medical bills/slips Exs.PW4/3 to Ex.PW4/74, it was established that the claimant had incurred huge expenses towards treatment. Some unforeseen expenses incurred by the injured cannot be ruled out keeping in view the recurring course of taking medicine by the claimant for the injury on her person. Claimant was admitted in the hospital w.e.f 20.10.2011 to 16.11.2011 and she also underwent operations. There was a fracture of right femur upper bone.

In view of aforesaid injuries, the Tribunal ought to have adopted a realistic approach in awarding just compensation to the injured. Award of Rs.47,000/- towards medical expenses, in my considered opinion is on the lower side, keeping in view the period of hospitalization and the nature of injuries suffered by the claimant/appellant. In my considered view, an amount of Rs.75,000/- would suffice to meet out the exigency under this head. Tribunal has awarded a consolidated amount of Rs.50,000/- towards special diet, transportation, pain and sufferings, attendant charges and mental agony etc. In view of nature of injuries, particularly in view of fracture of bone, the claimant was to take high protein diets in order to have a healing touch. In my considered opinion, an amount of Rs.20,000/- would meet the requirement of special diet during the period of treatment till recovery of the injured. The claimant remain hospitalized and thereafter, she herself has undertaken follow up action also. An amount of Rs.20,000/- towards transportation charges would suffice to meet out the exigency of charges of transportation. The claimant has suffered fracture of right femur. She remain hospitalized for about one month. Keeping in view the pain and sufferings suffered by the claimant, I deem it appropriate to award an amount of Rs.50,000/- towards pain and sufferings and mental agony suffered by the claimant. In my considered view, an amount of Rs.10,000/- would suffice to meet out the exigency of attendant charges. In this way an amount of Rs.1,00,000/- towards pain and sufferings, mental agony, special diet, transportation and attendant charges can be assessed.

The Tribunal has awarded an amount of Rs.47,000/- towards medical expenses. The difference under this head would come out to be Rs.28,000/- [75,000 (assessed in appeal) - 47,000 (awarded by the Tribunal)]. The difference towards pain and sufferings, mental agony, transportation, special diet and attendant charges would also come out to be Rs.50,000/- [1,00,000 (assessed in appeal) - 50,000 (awarded by the Tribunal)]. In this way, there shall be enhancement of Rs.78,000/- (28,000+50,000) in favour of the claimant/appellant.

The enhanced amount of Rs.78,000/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount. Liability to pay the amount of compensation shall remain the same as ordered by the Tribunal in the main award.

4. FAO No.4758 of 2014(O&M)

This is an appeal preferred by the Insurance Company.

Insurance Company only aggrieved by the assessment to the tune of Rs.30,000/- per annum made by the Tribunal in the context of commission assessed towards annual income of the deceased.

The commission payable to the deceased was assessed on the basis of evidence i.e. testimony of Arun Kapur, Higher Grade Assistant, LIC of India who while appearing as PW 2 has proved the factum of income as commission to the deceased. The witness has proved the authorization certificate Exs.PW2/2 and Ex.PW2/3 in respect of agency given to deceased Gurmej Singh.

The Insurance Company could not lead any evidence to the contrary, therefore, in my considered opinion, the assessment to the tune of Rs.30,000/- per annum as commission from LIC was based on evidence led by the claimants during the period of May 2011 to December 2011 and the said assessment was made as per testimony of PW 2 who has admitted the same to be correct and was on the basis of work rendered by the deceased.

In view of above, no fault can be found in the award made by the Tribunal in respect of computation of amount of

Rs.30,000/- per annum towards commission from LIC. This appeal is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
12.09.2017 **JUDGE**
prince
Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**