IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 25.09.2017

(1) F.A.O. No. 1405 of 2014 (O&M)

Gurjeet Kumar and others ......Appellants

Versus

Surinder and others

......Respondents

(2) F.A.O. No. 1406 of 2014 (O&M)

Gurjeet Kumar ......Appellant

Versus

Surinder and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Randeep Singh, Advocate
for the appellant(s).

Ms. Vandana Malhotra, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

This order shall dispose of FAO Nos. 1405 of 2014 and 1406 of 2014. As both these appeal arise out of award dated 1.11.2013 passed by the Motor Accidents Claims Tribunal, Karnal (for short 'the Tribunal'). Since, the appeals arise out of common award and from the common accident, the same are being disposed of by common order.

Both these appeals have been filed for enhancement of compensation awarded by the Tribunal

The brief facts necessary for adjudication of the present appeals are noted:

On 30.11.2011 unfortunately a pregnant lady Poonam Devi lost her life in an accident. She was travelling with her husband on a motor cycle bearing registration No.HR-05-X-1195 on G.T. Road near Panipat. They were struck by a truck bearing registration No.HR-69-A-5557. She was taken to hospital by one Mahinder Singh, but she was declared brought dead. FIR No. 289 dated 30.10.2011 was registered at Police Station Madhuban. The deceased was aged 25 years at the time of accident and was four month's pregnant.

Two claim petitions under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act') were filed; one by the husband and two minor daughters and other by husband only.

The Tribunal after considering the witness and evidence, awarded a sum of ₹ 6,96,200/- along with interest at the rate of 7.5% per annum to the LRs of Poonam Devi.

In the other petition filed for compensation for loss of fetus, an amount of ₹ 1,00,000/- was awarded. Though, it has been wrongly written in the award that ₹ 1,00,000/- is awarded for loss of consortium but actually it is for loss of fetus.

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

There is no dispute on facts of the cases by either of the parties.

Learned counsel for the appellants argued that the deceased was a house-wife and survived by husband and two minor daughters. Her notional income was taken as ₹ 4200/- per month by the Tribunal. There is no dispute about the assessed income but the only issue raised is that she was a house-wife and 1/3rd deduction for self expenses should not have been made. Learned counsel further contended that no amount for loss of consortium has been awarded. Learned counsel also argued that the Tribunal erred in applying multiplier of 17, whereas multiplier of 18 should have been applied.

With regard to the second appeal, learned counsel argued that ₹ 1,00,000/- awarded for loss of fetus, the deceased was four month's pregnant, the amount is on lower side.

Learned counsel for the Insurance Company vehemently defended the award and argued that no further enhancement is required in the present case.

The contention raised by learned counsel for the appellants deserves acceptance.

The issue raised with regard to the 1/3rd deduction in case of house-wife is no longer re-integra.

This Court relying upon a decision of Hon'ble the Apex Court in case of Arun Kumar Aggarwal and another Versus National Insurance Company and others (2010-3) 159 PLR 428 (SC) in ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others,*** Vol.CLXXII (2013-4) 329, has held as under:

> "15. After the decision in Lata Wadhwa's case (supra), the notional income of the housewife is estimated according to their age. The notional income of the housewife was taken to be Rs.3,000/- per month if she had been between the age group of 34 to 59 at the time of accident. The only riddle which is to be solved by us is as to whether 1/3rd cut should be applied on the notional income or not? The answer to this question is couched in the aforesaid extracted paragraph of the judgment of *Lata Wadhwa's case* (supra), as in that case, the Supreme Court was searching for a modest notional income of the housewife who was not earning an income but rendering multifarious services while managing all the chores of the family. Since it is a case where the Courts are

> confronted with the notional income of the housewife on account of her multifarious services which not only includes rearing the children but also performing all matrimonial obligations, in our considered view, the deduction of 1/3rd out of her notional income is not warranted."

In the above decision, it has been laid down that in case of death of house-wife, since it is the notional income which is to be taken into account as her services not only include rearing the children but also perform all matrimonial obligations. In such circumstance, 1/3rd deduction is not warranted.

The issue regarding multiplier is covered by the decision of Hon'ble the Apex Court in Smt. ***Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** it has been held that in age group of 15 to 20 and 21 to 25 years, multiplier of 18 should be applied.

The compensation awarded is recalculated as below:

4200 x 12 x 18=9,07,200.

Further the argument of learned counsel for the appellants that no compensation has been awarded under the head of loss of consortium, is also supported by the decision of Hon'ble the Apex Court in ***Asha Verman and others Vs. Maharaj Singh and others, 2015(4) SCC (Civil) 767,*** where it has been held that in case of death, loss of consortium, has to be awarded to the spouse.

Hon'ble the Apex Court in ***National Insurance Company Ltd. Versus Kusuma and another,*** 2011 (13) SCC 306, has awarded ₹ 1,80,000/- for 30 weeks' pregnancy, where an infant child died in the accident.

Keeping in view the above decision, ₹ 1,00,000/- is awarded for loss of consortium. With regard to the compensation awarded for loss of infant child, keeping in view the facts and circumstances of the case, the age of the deceased and particularly that she was four month's pregnant, amount of ₹ 1,00,000/- is enhanced to ₹ 1,50,000/-.

The award dated 1.11.2013 is modified to the extent that the amount awarded of ₹ 5,71,200/- (in FAO No. 1405 of 2014) is enhanced to ₹ 11,32,200/-. The amount of ₹ 1,00,000/- awarded (in FAO No. 1406 of 2014) is enhanced to ₹ 1,50,000/-. The claimants shall be entitled to enhanced amount alongwith interest at the rate of 6% per annum from the date of filing of the claim petition till realization of the amount.

The appeals are accordingly partly allowed and are disposed of in the aforesaid terms.

(AVNEESH JHINGAN)
JUDGE

25.09.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No