IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2187 of 2014 (O&M)
Date of Decision: December 07, 2017

Rambir

..Appellant(s)

Versus

Dinesh Kumar Yadav and others

..Respondent(s)

with

FAO No. 8504 of 2014 (O&M)

Kamlesh Devi and others

..Appellant(s)

Versus

Dinesh Kumar Yadav and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vivek Suri, Advocate
for the appellant(s).

Mrs. Madhu Sharma, Advocate
for respondent no.3-insurance company.

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ANITA CHAUDHRY, J.

These are two appeals filed by the claimants seeking enhancement in the award dated 02.11.2013 passed by the Motor Accident Claims Tribunal, Panchkula (here-in-after referred to as the Tribunal).

FAO-2187-2014

Few facts of this appeal need to be detailed first. The claimant Rambir alongwith his colleague Kailash were going towards Kalka. When they were near Gandhi Chowk, a truck driven by respondent no.1 came in a rash and negligent manner and hit them. The truck had initially struck against a Indigo car damaging the right side and then hit the pedestrian namely Rambir and Kailash. Kailash suffered injuries on both the legs and died later while Rambir sustained a disability of 10%. An FIR was registered the same day.

In the claim petition filed by Rambir it was claimed that the injured was a tailor and was earning Rs.8,000/- per month. The Tribunal took the monthly income at Rs.8,000/- and assessed the disability using the multiplier of 18 and awarded a sum of Rs. 1,47,603/-.

The submission on behalf of the appellant is that there was a fracture of the backbone and he was a tailor and it was difficult for him to squat and the hospitalization was for 22 days and the Tribunal has allowed the income only for the period of hospitalization. It was urged that the amount allowed for pain and suffering and loss of earning capacity and other heads was on the lower side.

The submission on behalf of the respondent-insurance company is that in the connected claim petition it was stated that the deceased was a tailor and there the income was taken at Rs.7,000/- per month and in this case the Tribunal had taken the income as Rs.8,000/- per month without there being any evidence and the same income should have been taken for both the injured and the deceased. It was urged that the functional disability would not be 10% and adequate amount had been allowed.

The disability certificate Ex. P-20 shows that the disability of 10% had been assessed not for any injury on the back but in relation to the lower limb as there was a complaint of limb and stiffness and difficulty in squatting. The injured was 28 years old and was unmarried. The hospitalization is for 22 days but he would not have been able to attend to his duties at least for three months. Therefore, the amount allowed for loss of income is on the lower side and the compensation needs to be increased and I would award the following:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Loss of income (Rs.7000 x 3)	Rs.21,000/-
2.	Functional disability @ 5% (Rs.350 x 12 x 18)	Rs.75,600/-
3.	Transportation	Rs.10,000/-
4.	Attendant charges	Rs. 7,500/-
5.	Medical expenses (actual)	Rs.10,333/-
6.	Pain and suffering	Rs. 15,000/-
7.	Special diet	Rs. 10,000/-
8.	Loss of prospects of marriage	Rs.50,000/-
	TOTAL	**Rs.1,99,433/-**

The Tribunal had allowed Rs.1,47,603/-, which would be deducted and the remaining amount would be payable by the insurance company with interest @ 6% from the date of filing of appeal till realization.

FAO-8504-2014

The submission on behalf of the appellant is that the deceased was unmarried and only 22 years old and there should be an addition towards future prospects and the Tribunal had wrongly applied the multiplier of 15 and it should be 18.

The submission on the other hand is that the multiplier considering the age of the claimant is correct and the Tribunal has dealt with the judgment rendered by the three Judges Bench and the Tribunal has allowed higher amount for last rites.

The income of deceased was taken as Rs.7,000/- per month and I would not make any change. An addition of 40% will has to be made and the addition would be Rs.2,800/- and the total income for the purposes of calculation would be Rs.9,800/-. Deducting 50%, the compensation will be Rs.4,900 x 12 x 15 = Rs.8,82,000/-. To this, a sum of Rs.15,000/- is added for loss of estate and Rs.15,000/- is added for the funeral expenses. The total compensation payable was Rs.8,97,000/-. The Tribunal had allowed Rs.6,55,000/-, which would be deducted and the remaining amount would be payable by the insurance company with interest @ 6% from the date of filing of appeal till realization.

Both the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

December 07, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether r0eportable : Yes/No