In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:31.7.2017

FAO No. 4113 of 2015

Smt.Kishni

---Appellant

vs.

Tota Ram and others

---Respondents

FAO No. 58 of 2014

Parminder @ Ravinder

---Appellant

vs.

Tota Ram and others

---Respondents

FAO No. 62 of 2014

Pawan

---Appellant

vs.

Tota Ram and others

---Respondents

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr.S.S.Shekhawat, Advocate
for the appellant in FAO No. 4113 of 2015

Mr. K.S.Malik, Advocate
for the appellants in FAO Nos. 58 and 62 of 2014

Mr. Sanjeev Goyal, Advocate
for the insurance company in all the appeals

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Rekha Mittal, J.

This order will dispose of FAO No. 4113 of 2015, 58 and 62 of 2014 as these have emerged out of the same award dated 13.11.2013 passed by the Motor Accidents Claims Tribunal, Rohtak (in short "the Tribunal") whereby compensation has been awarded in regard to death of Dalbir Singh, injuries sustained by Parminder @ Ravinder and Pawan.

FAO No. 4113 of 2015

Smt. Kishni Devi, widow of late Sh. Ram Phal claims compensation in regard to death of her son Dalbir Singh in a motor vehicular accident that took place on 8.6.2012.

The Tribunal assessed income of the deceased at Rs. 4000/- per month, added 30% for increase in income (future prospects), deducted 50% for personal and living expenses and applied a multiplier of 18 to compute loss of dependency. In addition, an amount of Rs. 25,000/- has been awarded for expenses on funeral.

Counsel for the appellant has submitted that compensation for increase in income towards future prospects should be 50% as the deceased was less than 40 years of age. The Tribunal has not awarded any compensation for loss of love and affection and compensation allowed for funeral expenses has not been added while calculating total amount payable to the appellant.

Counsel for the insurance company, on the contrary, would submit that as the matter with regard to grant of future prospects is pending consideration before a Larger Bench of Hon'ble the Supreme Court of India in view of reference made in ***National Insurance Co. Limited vs. Pushpa,*** appellant is not entitled to the said benefit. Another submission made by counsel is that as per contention of the appellant raised before the Tribunal, deceased was 27 years of age, therefore, admissible multiplier would be 17 in place of 18. It is further prayed that error in making calculations by extending benefit of funeral expenses requires to be corrected.

I have heard counsel for the parties, perused the paper book particularly, the award.

The Tribunal has assessed income of the deceased on the basis of wage of an unskilled worker. Taking into consideration notification issued by the State of Haryana with regard to wage available in June 2012, income of the deceased is assessed at Rs. 4900/-. As the deceased was stated to be 27 years old at the time of death, admissible multiplier would be 17 in place of 18. The appellant shall be entitled to increase in income for future prospects to the extent of 50% in the light of judgment of Hon'ble the Supreme Court of India **Rajesh and others vs. Rajbir Singh and others 2013(3) RCR (Civil) 170.** The mere fact that a reference is pending before a Larger Bench of Hon'ble the Supreme Court of India is not sufficient to deny the said benefit until the judgment in **Rajesh and others' case (supra)** is set aside or varied.

In view of the above, loss of dependency comes to Rs. 4900 x 12x17= 9,99,600/- + 4,99,800 (50%) = Rs.14,99,400 – 749700 (50%)= Rs.7,49,700/-.

Compensation awarded by the Tribunal for expenses on funeral to the tune of Rs. 25,000/- is affirmed. The appellant shall be entitled to an amount of Rs. 50,000/- for loss of love and affection. In this manner, total compensation comes to Rs. 8,24,700 /- There is arithmetical mistake in calculations made by the Tribunal. As per correct calculations, compensation assessed by the Tribunal comes to Rs. 5,86,600/-. Hence the additional amount comes to Rs. 2,38,100/- (Rs, 8,24,700 – 5,86,600). The additional amount shall be payable with interest at the rate of 7.5% from the date of petition till realization. It is clarified that liability of the insurance company to pay compensation is to the tune of Rs.8,24,700/- in all.

The appeal is partly allowed in the aforesaid terms.

FAO-58 of 2014

Counsel for the appellant has submitted that the Tribunal has awarded a sum of Rs. 20,000/- without correctly appreciating that the injured suffered disability to the extent of 7%. It is further submitted that he has proved on record medical bills (Exs. P-8 to P-18). The injured remained hospitalized in PGI MS Rohtak from 8.6.2012 to 15.6.2012. Further argued that as the injured was driver by profession earning Rs. 8,000/- per month, due to disability, he would not be able to work as a driver, therefore, he is entitled to loss of entire income.

Counsel representing the insurance company has submitted that no evidence has been adduced by the injured that he was a driver by profession nor he has brought on record his driving licence. He has not examined the doctor to prove the disability certificate or whether such a disability can be a hindrance in doing a particular job/work.

Hon'ble the Supreme Court of India in **Raj Kumar vs. Ajay Kaushik and others 2011 (2) RCR(Civil)101** has laid down certain guidelines for assessing compensation in injury cases both under pecuniary damages (special damages) and non-pecuniary damages (general damages) heads. In para 6 of the judgment, it has been held, quoted thus:-

> "6. The heads under which compensation is awarded in personal injury cases are the following:
>
> Pecuniary damages (Special damages)
>
> (i)Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
>
> (a) Loss of earning during the period of treatment;
>
> (b) Loss of future earnings on account of permanent disability.
>
> (iii) Future medical expenses.
>
> Non-pecuniary damages (General damages)
>
> (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
>
> (v) Loss of amenities (and/or loss of prospects of marriage).
>
> (vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be

> granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life.
>
> 7. Assessment of pecuniary damages under Item (i) and under Item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses Item (iii) depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non pecuniary damages Items (iv), (v) and (vi) involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decisions of this Court and the High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability Item (ii)(a)."

In the case at hand, except statement of the injured victim, no evidence has been adduced to prove the activities the claimant can carry on despite permanent disability. There is no clear and satisfactory evidence on record about avocation/profession of the injured before the incident. Under the circumstances, compensation is to be awarded on the basis of assumptions, guess work and hypothesis etc. as has been held by Hon'ble the Supreme Court of India in **R.D.Hattangadi vs.**

M/s Pest Control (India) Private Limited AIR 1995 (SC) 755.

Perusal of disability certificate Ex. P-21 would reveal that permanent disability to the extent of 7% has been assessed on account of delayed union of # shaft of femur L with shortening of L lower limb by 01/one inch with painful limb.

In view of nature of disability, appellant is awarded an amount of **Rs. 20,000/-** qua disability suffered by him. He is allowed an amount of **Rs. 30,000/-** for pain and suffering, services of an attendant, special diet and transportation etc.

The value of medical bills Ex. P-8 to P-18 comes to Rs. 8459.87/- (rounded off to Rs. 8460/-). He is awarded an amount of **Rs. 8460/-** for expenses on treatment. The injured remained hospitalized for a period of 08 days, he suffered disability to the extent of 7%. He must not have been able to perform his duties for a period of two months. In view of minimum wage admissible in June 2012 (Rs. 4900/- per month), the appellant is awarded an amount of **Rs.9800/-** for loss of income for the period of treatment and recovery. The total compensation comes to **Rs. 68,260/-** (50,000 + 9800 + 8460) and the additional amount is **Rs. 48,260/-**. The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization.

The appeal stands disposed of accordingly.

FAO-62 of 2014

The Tribunal has awarded a sum of Rs. 66,000/- to the injured who suffered disability to the extent of 13%. It is submitted that the claimant has proved on record medical bills (Exs. P-22 to P-26 and P-30 to P-44) amounting to Rs. 87, 551/-. The injured remained hospitalized in PGI MS Rohtak from 8.6.2012 to 12.6.2012. It is further argued that as the injured was driver by profession earning Rs. 8,000/- per month, due to disability, he would not be able to work as a driver, therefore, he is entitled to loss of entire income.

Counsel representing the insurance company advanced the same arguments as were raised in FAO No. 58 of 2014.

For the reasons recorded while deciding FAO No. 58 of 2014, compensation is assessed as detailed hereunder.

Perusal of the disability certificate Ex. P-29 would reveal that permanent disability to the extent of 13% has been assessed on account of BBFA R II MT R foot.

In view of nature of disability, the appellant is awarded an amount of **Rs. 30,000/-** for permanent disability and an amount of **Rs. 30,000/-** for pain and suffering, services of an attendant, special diet and transportation etc.

The value of medical bills Ex. P-22 to P-26 and P-30 to P-44 is Rs. 87,551/-, thus awarded an amount of **Rs. 87,551/-** for expenses on treatment. The injured remained hospitalized for a period of 05 days, he suffered disability to the extent of 13%. He must not have been able to perform his duties for a period of two months. In view of minimum wage admissible in June 2012 (Rs. 4900/- per month), the appellant is awarded an amount of **Rs.9800/-** for loss of income for the period of treatment and recovery. The total compensation comes to **Rs. 1,57,351/-** (30,000 + 30,000

+87,551 + 9800) and the additional amount is **Rs. 91,351/-**. The additional amount shall carry interest at the rate of 7.5% per annum from the date of petition till realization.

Appeal stands disposed of accordingly.

(Rekha Mittal)
Judge

31.7.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No