IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 19.09.2017

1. CM Nos.15108-CII to 15110-CII of 2014 in
Cross Objection No.153-CII of 2014 in/and
FAO No.704 of 2013

Guddi Devi and others ......Appellants

Versus

Pala Ram and others ... Respondents

2. CM Nos.15111-CII to 15113-CII of 2014 in
Cross Objection No.154-CII of 2014 in/and
FAO No.703 of 2013

Subhash ......Appellant

Versus

Pala Ram and others ... Respondents

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

Present: Mr. B.S. Mittal, Advocate
for the appellants.

Mr. Vishal Aggarwal, Advocate
for Bajaj Allianz General Insurance Co.Ltd/cross objector.

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RAJ MOHAN SINGH, J.

Vide this common order, CM Nos.15108-CII to 15110-CII of 2014 in Cross Objection No.153-CII of 2014 in/and FAO No.704 of 2013 titled Guddi Devi and others Vs. Pala Ram and others and CM Nos.15111-CII to 15113-CII of 2014 in Cross

Objection No.154-CII of 2014 in/and FAO No.703 of 2013 titled Subhash Vs. Pala Ram and others are being disposed of.

Common facts in brief are that the accident took place on 30.06.2010 at about 4:30 PM when the claimant Subhash along with Het Ram was returning to the village after visiting the relatives in the village Fafana on his motorcycle which was being driven by Het Ram. Subhash was pillion rider. When they reached in between village Brasri and Roopawas, the offending vehicle came from the opposite side in a rash and negligent manner and was being driven with high speed by respondent No.1. The offending vehicle struck against the motorcycle of Het Ram. As a result of which, both the occupants of the motorcycle fell down and received multiple serious injuries on their persons. The motorcycle was also damaged to a greater extent. Respondent No.1 fled away from the spot after leaving the offending vehicle. Both the injured were shifted to Hospital of Dr. B.R. Bishnoi. Injured were given treatment for the injuries received by them. Injured Subhash got injuries on right knee, right forearm, right leg, right hand and also received multiple fractures proximal end of tibia, fractures of distal shaft and ulna and distal end of radius through articular surface. He also received other injuries for which MLR, X rays, CT Scan, MRI were conducted. The injured remained hospitalized from 30.06.2010 to 16.07.2010. Even thereafter, he also did follow up treatment in the hospital and remained under-treatment of different doctors. Het Ram died in the hospital due to the injuries suffered by him.

In respect of accident in question, FIR No.92 was also lodged on 30.06.2010 against respondent No.1.

Motor Accident Claims Tribunal, Sirsa held under issue No.1 that the accident in question took place due to rash and negligent driving of respondent No.1.

1. CM Nos.15108-CII to 15110-CII of 2014 in Cross Objection No.153-CII of 2014 in/and FAO No.704 of 2013

CM Nos.15108-09-CII of 2014

For the reasons mentioned in the applications, delay of 41 days in re-filing the cross objections and 14 days in filing the cross objections is condoned.

Applications stand disposed of.

Cross Objection No.153-CII of 2014

At the very outset, learned counsel for the cross objector i.e. Insurance Company does not press the cross objections in view of law laid down by the Hon'ble Apex Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017(7) Scale 731 .***

In view of aforesaid, cross objections filed by the Insurance Company are hereby dismissed being not pressed.

Main case

Claimants Guddi Devi, widow of Het Ram, Santosh married daughter of Het Ram, Bimla married daughter of Het Ram, Raj Bala daughter of Het Ram, Sunita daughter of Het Ram, Ashok Kumar son of Het Ram and Kavita daughter of Het Ram filed the claim petition for compensation on account of death of Het Ram.

Het Ram (deceased) was 50 years of age and was an agriculturist. The income of the deceased was assessed to be Rs.4500/- per month i.e. at par with a skilled labourer. Deduction to the tune of $1/4^{th}$ was applied towards personal expenses. Multiplier of 13 was applied and the amount was assessed to be Rs.5,26,500/-. An amount of Rs.3500/- towards funeral expenses and an amount of Rs.20,000/- towards loss of consortium was awarded. In this way, an amount of Rs.5,50,000/- was awarded by the Tribunal to the claimants on account of death of Het Ram.

In my considered opinion, the income of the deceased was correctly assessed to be Rs.4500/- per month as was being paid to a skilled labourer at the relevant time. The deceased was 50 years of age at the time of accident. After deducting 1/4th towards personal expenses, the Tribunal has rightly assessed an amount of Rs.3375/- per month and Rs.40,500/- towards annual dependency of the family which would be just and appropriate. The multiplier of 13 keeping in view the age of the deceased is also in consonance with the ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77***, the amount to the tune of Rs.5,26,500/- was rightly considered towards dependency of the family. An amount of Rs.3500/- was assessed towards funeral expenses besides awarding an amount of Rs.20,000/- towards loss of consortium by the Tribunal. In my considered opinion that amount is on the lower side. The claimant widow is entitled to an amount of Rs.1,00,000/- towards loss of consortium. Funeral expenses to the tune Rs.25,000/- can be assessed as against Rs.3500/- awarded by the Tribunal. The Tribunal has not awarded anything towards loss of love and affection to the claimants. There are seven claimants in total, out of which loss of consortium has already been awarded to claimant No.1, therefore, remaining claimants are held entitled to an amount of Rs.1,00,000/- each (total Rs.6,00,000/-) towards loss of love and affection in view of ratio laid down in ***Smt. Neeta w/o Kallappa Kadolkar and others Vs. The Divn. Manager, MSRTC, Kolhapur, 2015(1) RCR (Civil) 625.*** Keeping in view the composition of the family which includes son more than 21 years of age, I do not wish to assess anything for the management of land by the attendant. In this way, total amount of Rs.12,51,500/- can be calculated towards compensation in favour of the claimants/appellants (5,26,000 + 25,000 + 1,00,000 + 6,00,000).

In view of aforesaid determination, following calculations can be made on comparative data:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1.	Monthly income	3375/- (after deducting 1/4th towards self expenses)	3375/- (after deducting 1/4th towards self expenses)	
2.	Annual Dependency	3375X12 =40,500/-	3375X12 =40,500/-	
3.	Compensation after multiplier	5,26,500/-	5,26,500/-	Nil
4.	Loss of love and affection	Nil	6,00,000/-	6,00,000/-
5.	Funeral expenses	3500/-	25,000/-	21,500/-
6.	Loss of consortium	20,000/-	1,00,000/-	80,000/-
	Total Compensation	5,50,000/-	12,51,500/-	7,01,500/-

The enhanced amount of Rs.7,01,500/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

2. <u>CM Nos.15111-CII to 15113-CII of 2014 in Cross Objection No.154-CII of 2014 in/and FAO No.703 of 2013</u>

<u>CM Nos.15111-12-CII of 2014</u>

For the reasons mentioned in the applications, delay of

41 days in re-filing the cross objections and 14 days in filing the cross objections is condoned.

Applications stand disposed of.

Cross Objection No.154-CII of 2014

At the very outset, learned counsel for the cross objector i.e. Insurance Company does not press the cross objections in view of law laid down by the Hon'ble Apex Court in ***Mukund Dewangan Vs. Oriental Insurance Company Limited, 2017(7) Scale 731 .***

In view of aforesaid, cross objections filed by the Insurance Company are hereby dismissed as withdrawn being not pressed.

Main case

While assessing the compensation for the injuries suffered by Subhash, the Tribunal has assessed an amount of Rs.1,80,000/- as total compensation payable to injured Subhash. The aforesaid assessment has been made by the Tribunal by taking into consideration, an amount of Rs.64,330/- towards treatment, an amount of Rs.1,10,160/- towards future loss of income on account of 12% permanent disability by multiplier method, besides this an amount of Rs.5510/- was assessed towards pain and sufferings.

In view of law laid down by Hon'ble Apex Court in ***Govind Yadav Vs. New India Insurance Company Limited, 2011 (4) RCR (Civil) 817, K. Suresh Vs. New India Assurance Company Limited and another, 2013(1) RCR (Civil) 312, S. Manickam VS. Metropolitan Transport Corporation Ltd., 2013(3) RCR (Civil) 696, G. Ravindranath @ R. Chowdary Vs. E. Srinivas and another, 2013(3) RCR (Civil) 934, Rekha Jain Vs. National Insurance Company Ltd., 2013(3) RCR (Civil) 996, Neerupam Mohan Mathur Vs. New India Assurance Company, 2013(4) Law Herald (SC) 3422, Yadava Kumar Vs. The Divisional Manager, National Insurance Company Ltd. and another, 2010(4) RCR (Civil) 155,*** in case of permanent disability, the compensation towards permanent disability as well as loss of earning capacity on account of said permanent disability have to be assessed independently. The determination of compensation for loss of earning capacity on the basis of multiplier method was held to be proper by the Hon'ble Apex Court. In determination of compensation, some guess work and hypothetical considerations based on sympathy can be worked out, but ultimate determination has to be considered with some objective standards. There cannot be a flight in fancy. The award should correspondent to reasonableness and should be in consonance with conventional sum. The endeavor should be to award just compensation keeping in view the sufferings of the injured person.

The injured has suffered permanent disability to the tune of 12%. The income of the injured was assessed to be Rs.4500/- per month. Monthly loss to the income of the injured to the tune of 12% was assessed to be Rs.540/- i.e. Rs.6480/- per annum. Keeping in view the age of the deceased and in view of ratio laid down in ***Smt. Sarla Verma Vs. Delhi Transport Corporation, 2009 (3) RCR (Civil) 77,*** multiplier of 17 was rightly applied, thereby making the compensation to the tune of Rs.1,10,160/- towards loss of future income on account of permanent disability. In my considered opinion, Rs.2000/- per percentage of permanent disability has to be added, therefore, an additional amount of Rs.24,000/- (2000 X 12) can be assessed towards permanent disability of the body suffered by the claimant. In this way an amount of Rs.1,34,160/- (1,10,160 + 24,000) can be assessed in the aforesaid head. Keeping in view the injuries suffered by the injured and period of hospitalization, an amount of Rs.5510/- towards pain and sufferings in my considered opinion is wholly inadequate. The injured/claimant received injuries on right knee, right forearm, right leg, right hand and also received multiple fractures proximal end of tibia, fractures of distal shaft and ulna and distal end of radius through articular surface. With the aforesaid injuries on the person of the injured, one can easily visualize the extent of pain and sufferings suffered by the injured after the accident, during the period of treatment and thereafter. Though there cannot be any straight jacket formula for assessing the extent of pain and sufferings suffered by the injured, but on some guess work, the Court can award just compensation towards pain and sufferings. In my considered opinion, an amount of Rs.1,00,000/- would suffice to serve the purpose of awarding compensation under the head of pain and sufferings. The Tribunal has awarded an amount of Rs.64330/- towards medical expenses. In a case of recurring treatment for a substantial period, there are certain hidden expenses in day to day expenditure in the hospital and outside. In my considered opinion, an amount of Rs.75,000/- would suffice to serve the total expenses for the treatment of the injured. The Tribunal has not awarded anything towards transportation, attendant charges, special diet and loss of future amenities in life including matrimonial enjoyment. In view of injuries received by the injured, period of hospitalization and thereafter follow up treatment, I deem it appropriate to award a consolidated amount of Rs.1,00,000/- towards special diet, transportation and attendant charges. An amount of Rs.50,000/- would suffice to serve the purpose of loss of future enjoyment in life including matrimonial enjoyment. In this way, total amount of compensation can be assessed as Rs.4,59,160/- (1,10,160 + 24,000 + 1,00,000 + 75,000 + 1,00,000 + 50,000).

In view of aforesaid determination, following calculations can be made on comparative data:-

Sr. No.	Heads	Amount awarded by the Tribunal	Amount assessed in appeal	Difference
1.	Future loss of income on account of permanent disability and permanent disability of the body	1,10,160/-	1,10,160 + 24,000 = 1,34,160/-	24,000/-
2.	Pain and sufferings	5510/-	1,00,000/-	94,490/-
3.	Medical expenses	64,330/-	75,000/-	10,670/-
4.	Special diet, Transportation and attendant charges.	Nil	1,00,000/-	1,00,000/-
5.	Loss of future enjoyment	Nil	50,000/-	50,000/-
	Total Compensation	1,80,000/-	4,59,160/-	2,79,160/-

The enhanced amount of Rs.2,79,160/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till final realization of the amount.

(RAJ MOHAN SINGH)
19.09.2017 **JUDGE**
prince
Whether Reasoned/Speaking **Yes/No**
Whether Reportable **Yes/No**