Sr. No. 228

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO NO.8067 of 2014(O&M)
Decided on: 17.07.2017

Future General India Insurance Co.Ltd. @ Future General Insurance Co. Ltd. ....Appellant

versus

Rekha and others
.............Respondents

FAO No.1555 of 2015(O&M)

Rekha and others
..........Appellants

versus

Jai Bishan and others
..........Respondents

Coram: **HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Rajesh Hooda, Advocate(1555/2015),
Mr. Vishal Aggarwal, Advocate(8067/2014)
for the appellants.

Mr. Rajni Kant Upadhyay, Advocate
for respondents No. 1 and 2(1555/2015)
for respondents No. 4 and 5(8067/2014).

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two appeals i.e. FAO No.8067 of 2014 and FAO No.1555 of 2015 arising out of two motor accident claims due to the accident which had occurred on 22-03-2012. FAO No. 8067 of 2014 have been filed by the insurance company. Other FAO No. 1555 of 2015 has been filed by the claimants, i.e. the widow of the deceased, minor daughter of the deceased and the mother of the deceased. Both the appeals are being disposed of by the same order since it involves the same accident.

Brief facts of the case as pleaded by the claimants in the claim petition are that the deceased Dharambir was going on his TVS Scooty from his village Aasandha along with his nephew to Sampla on 23-03-2012. Suddenly the truck bearing registration number HR-69A-4754 came from the side of Sampla and hit the Scooty of the deceased. In that accident Dharambir had received fatal injuries. He was taken to PGIMS Rohtak. However during the treatment he expired on 31-03-2012. It was claimed by the claimants that the deceased was working as a Cable Operator and was earning ₹ 15,000/- per month. It was claimed that the deceased was of 32 years of age.

The driver and the owner had denied the contents of the claim petition for want of knowledge and had denied the accident in question. The insurance company of the Truck in question raised objection that the driver of the truck was not holding the valid license and that there was no fitness certificate and the route permit for the vehicle in question.

Parties led their respective evidences. After appreciating the evidence, Ld. MACT Jhajjar awarded a compensation of ₹10,30,000/- along with interest at the rate of 8% from the date of filing of the petition till realization. The income of the deceased was taken at ₹7000/- per month treating him to be a semi-skilled worker and therefore by deducting ₹2000/- as personal expenses the dependency was assessed to be ₹5000/- per month. Multiplier of 16 was applied. Thus, ₹9,60,000/- were granted under the head of loss of income/dependency. Besides this Rs.25,000/- were granted as transportation and funeral expenses. Also a nominal compensation of ₹25,000 was granted on account of love and affection to petitioners No.2 and 3. Further ₹20,000/- were granted on account of loss of consortium.

The plea of the insurance company that there was contributory negligence on the part of the deceased also was specifically rejected on the grounds that no evidence whatsoever has been lead by the insurance company in this regard. Further the driving license of the driver was held to be valid. Therefore the insurance company was held liable.

Learned counsel appearing for the appellants in FAO No.1555 of 2015 has submitted that the income assessed by the Tribunal is on the lower side. He submits that the income of the deceased should be assessed at least ₹10,000/- per month in terms of the judgment of the Hon'ble Supreme Court rendered in *V. Mekala V/s M. Malathi and others 2014(6) JT 2012*. It is further submission of the learned counsel for the appellant that the amount of compensation on account of loss of consortium, loss of love and affection is grossly inadequate and it should be awarded at least ₹1 lakh each under each head in terms of the judgment of the Hon'ble Supreme Court in *Vimal Kanwar and others versus Kishore Dan and others, 2013(2) R.C.R.(Civil) 945*. Still further the submission of the learned counsel for the appellants is that the claimants are entitled to increase in compensation on account of loss of future prospects of the income of the deceased in terms of the judgment of Hon'ble Supreme Court in *Rajesh and others versus Rajbir Singh and others reported ads 2013 (9) SCC 54.*

In connected appeal FAO No. 8067 of 2014, the counsel for the appellant submits that the income of the deceased have been wrongly assessed on the higher side. As per the notification, sought to be placed on record by him before this Court, the income of the deceased; treating him as a semi-skilled worker; would not have been taken to be more than ₹5097/- per month, as per the notification of Minimum Wages issued in the State of

Haryana. Further it is the submission of the counsel for the appellant that in this case there was contributory negligence on the part of the deceased himself, therefore, the amount should be reduced to 50% on account of contributory negligence.

I have heard the learned Counsels for the parties and perused the file.

The Motor Accidents Claims Tribunal has rightly assessed the income of the deceased at ₹7000/- per month and there does not appear to be any irregularity in the findings recorded by the Tribunal in this regard. The argument of the Insurance Company that the income has to be restricted to minimum wages as prescribed by the State has to be noticed and rejected. The evidence/pleadings in the case make it clear that the deceased was having technical knowledge and was also working. Therefore, the Tribunal has rightly not restricted the income of the deceased to the level of Minimum Wages. Still further the Insurance Company has not lead any evidence to show that the working business industry of the deceased was adhering to only the minimum wages as prescribed by State. There is no presumption of law or fact that everywhere only the minimum wages would be paid and received, once the same is notified by the State. This applicability of minimum wages has to be proved by the respondent company; if it so claims. Otherwise, the Tribunal would be fully justified in assessing the income as per the prevalent economic perspective. Plea of the contributory negligence of the deceased is also rightly declined by the Tribunal. Mere fact of Head-on collision does not prove contributory negligence in absence of any other evidence to support this plea. Hence the income was rightly taken by the Tribunal at ₹ 7000/-per month. After deducting ₹2000/- for personal expenses; the Tribunal has rightly assessed the dependency to be ₹5000/- per month. The Multiplier of 16 is also rightly applied by the Tribunal. Hence the Award of the Tribunal to that extent is upheld.

The argument of the counsel for the appellants-claimants that the compensation on account of loss of consortium to the wife-claimant deserves to be enhanced in terms of the judgment of the Supreme Court in *Vimal Kanwar (supra)* deserves to be accepted. Therefore, an amount of ₹ 1 Lakh is awarded as compensation on account of loss of consortium. Still further in terms of the above-said judgment of Supreme Court in the above referred case an amount of ₹1 lakh each is awarded for loss of love and affection for a minor daughter and the mother.

The learned counsel for the appellant has submitted the compensation on account of loss of future prospects has to be awarded at the rate of 50% of the dependency as was laid down by the Hon'ble Supreme Court in the case of *Rajesh versus Rajbir (supra)*. As reply to this argument of the appellant the learned counsel appearing for the insurance company has submitted that point of future prospects in case of self-employed deceased has been referred to a larger bench of the Hon'ble Supreme Court, therefore, no compensation should be awarded on account of future prospects.

After considering the rival submissions of the counsels of the parties, this court is of the view that although the point of future prospects has been referred to the larger bench of the Hon'ble Supreme Court, however, till the larger bench takes a contrary view; the judgment of the Hon'ble Supreme Court which holds the field as of today; is binding precedent for this court. The point as decided by the larger bench of the

Supreme Court shall hold the field only after and as and when it is pronounced by the Hon'ble Supreme Court. The otherwise available right of a party before the Court can not be denied by this Court only for the reason that the Hon'ble Supreme Court has kept the point qua that right for reconsideration. Keeping a point for reconsideration does not by implication over-rule the existing judgment/precedent on that point. Therefore, the amount of compensation on account of future prospects cannot be denied to the claimants in this case on the ground that the matter has been referred to the larger bench.

In the present case deceased has been held to be of 32 years of age. Therefore applying the judgment of the Hon'ble Supreme Court in the case of *Rajesh versus Rajbir (supra)* the appellanta are held entitled to the 50% percent increase the in dependency on account of loss of future prospects. Therefore the dependency of the deceased is assessed to be ₹ 5000 plus ₹2500/-, that is, ₹7500/- per month.

In view of the above the compensation to the appellants is awarded as under:

HEADS OF COMPENSATION	**AMOUNT**
Loss of Dependency	7500 x 12 x 116= 14,41,000
Loss of Consortium	1,00,000/-
Loss of Love and Affection	1,00,000/- x 2 = 2,00,000/-
Transportation and Funeral Expenses	30,000/-
Total	**17,71,000/-**

The claimants are awarded compensation as mentioned above. The interest on the above said amount shall remain as was awarded by the learned Tribunal.

In view of the above, the appeal filed by the claimant i.e.FAO NO.1555 of 2015 is allowed and appeal filed by the Insurance Company i.e.FAO NO.8067 of 2014 is dismissed.

17th July, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*