

In the High Court of Punjab and Haryana at Chandigarh

FAO No.1665 of 2000

Date of decision: September 20, 2018

Smt. Radha

..... Appellant

Versus

Shankar Lal

..... Respondent

FAO No.1711 of 2000

Ram Murti and others

..... Appellants

Versus

Shankar Lal and others

..... Respondents

FAO No.1691 of 2004

Smt. Sushila Devi and others

..... Appellants

Versus

Shankar Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate for the appellant
in FAO No.1665 of 2000
Mr. Vinod Gupta, Advocate for the appellants
in FAO No.1711 of 2000
Mr. Jitender Dhanda, Advocate for the appellants
in FAO No.1691 of 2000
Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate for respondent No.3.

ANIL KSHETARPAL, J. (ORAL)

In all these three cases, which are arising from a single Award passed by the Motor Accident Claims Tribunal deciding number of claim petitions arising from one accident, unfortunately record of the Courts below is not available having been burnt in fire. Learned counsel for the parties also do not have any record. Hence, this Court has left with no choice but to decide the cases on the basis of material available.

In FAO Nos.1665 and 1711 of 2000, the claimants are seeking enhancement. They further want modification of the award to the effect that liability of the Insurance Company is composite and not contributory.

The accident took place on 08.07.1996 between a bus and a jeep. Learned Motor Accident Claims Tribunal has held that driver of bus and jeep were contributory negligent as jeep was coming from a college side (link road).

On the question of liability, there is no dispute. Hence as regards these two cases, the liability would be composite and not contributory.

In FAO No.1665 of 2000, 14 years old boy studying in 7th class had died in an accident. Learned Motor Accident Claims Tribunal had awarded a sum of ₹1,02,000/- (one lac as compensation and ₹2,000/- as funeral expenses) although learned counsel for the appellant relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kishan**

Gopal and others Vs. Lala and others, 2013(4) RCR(Civil), 276

to contend that the appellants are entitled to an amount of ₹5 lacs.

However, learned counsel for the Insurance Company has pointed out that in the aforesaid case, the evidence was led to prove that child used to help his father in the agriculture fields.

In the present case, neither there is any pleadings nor evidence to support that fact. Still further, accident took place on 08.07.1996. Keeping in view the totality of facts and using thumb rule, this Court is of the opinion that ends of justice would be met if the compensation payable is enhanced to ₹ 02 lacs on account of compensation and for funeral expenses ₹15,000, another sum of ₹15,000/- for loss of Estate. Thus, total compensation shall be payable ₹2,30,000/-, out of which, the compensation already paid shall be adjusted.

In FAO No.1711 of 2000, deceased was 33 years old serving as a Conductor of a private bus. It was claimed that he was drawing salary of ₹3,000/-. Employer appeared in evidence but did not produce any record. Learned Motor Accident Claims Tribunal assessed the income at ₹2,000/- in absence of any unimpeachable evidence. In such circumstances, although learned counsel for the appellant has tried to persuade this Court to take the income of the deceased as ₹3,000/-, the reasoning given by the learned Motor Accident Claims Tribunal in the absence of any unimpeachable evidence cannot be ignored. Deceased had left behind five dependents. Therefore, calculation made by the Motor Accident Claims Tribunal while working out

dependency at ₹1700/- per month is correct. However, in the present case since deceased was below 40 years, therefore, he shall be entitled to above all the income on account of 40% addition of the income on account of future prospects. Since deceased was 33 years, multiplier of 16 be applied. Under conventional heads, only ₹2,000/- has been awarded whereas the appellants are entitled to ₹70,000/- as held by Hon'ble the Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others, JT 2017(10) SC 450**. In view thereof, the compensation is worked as under:-

<u>Table No.1</u>	
Income Taken -	₹2000/-
Dependency-	400x12x16= ₹2,68,000/-
40%future Prospects	₹1,07,520/-
Total	₹3,75,520/-
Conventional Heads-	
Loss of Estate	₹15,000/-
Consortium	₹40,000/-
Funeral Expenses	₹15,000/-
Total	₹4,55,520/-

As regards, FAO No.1691 of 2004, in this case the driver of the jeep involved in the accident is in appeal. The Court has found that jeep was coming from the link road whereas the bus was going on the main road. In such circumstances, the Motor Accident Claims Tribunal has held that the driver had contributed to the negligence.

As regards, argument of learned counsel, for the enhancement, the interference is only required with regard to addition of income for future prospects, multiplier applied and compensation under conventional heads. As regards, future

prospects since the deceased was less than 40 years of age, hence 40% addition is required to be made in which dependency already calculated. As regards multiplier, same shall be 16 in place of 15. On account of conventional heads, only ₹7,000/- has been awarded, which shall be ₹70,000/- as per judgment passed by Hon'ble the Supreme Court in case of **National Insurance Company Ltd. Vs. Pranay Sethi and others, JT 2017(10) SC 450**. In view thereof, the compensation is worked as under:

Table No.2	
Income Taken -	₹2000/-
Dependency-	1700x12x16= ₹3,26,400/-
40%future Prospects	₹1,30,560/-
Total	₹4,56,960/-
Conventional Heads-	
Loss of Estate	₹15,000/-
Consortium	₹40,000/-
Funeral Expenses	₹15,000/-
Total	₹5,26,960/-

The enhanced compensation shall be payable with interest @ 7.5% from the date of filing of the petition till payment.

Disposed of.

(ANIL KSHETARPAL)
JUDGE

September 20, 2018
jt

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