In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 19.4.2018

FAO No. 1492 of 2001(O&M)

Suresh Devi and others

---Appellants

versus

Jagbir Singh and others

---Respondents

FAO No. 1494 of 2001

Smt. Promila and others

---Appellants

versus

Jagbir Singh and others

---Respondents

FAO No. 3035 of 2001

Abhey Ram and another

---Appellants

versus

Jagbir Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sandeep Sharma, Advocate
for the appellants in FAO- 1492 and 1494 of 2001
Mr. Vijay Dahiya, Advocate
for the appellants in FAO No.3035 of 2001
Mr.D.R.Bansal, Advocate,
for the insurance company
Mr. Vishal Kashyap, AAG, Haryana

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Rekha Mittal, J.

This order will dispose of FAO Nos. 1492, 1494 and 3035 of of 2001 as these have emerged out of the same award dated 21.1.2000 passed by the Motor Accidents Claims Tribunal, Rohtak (in short "the Tribunal") whereby compensation has been awarded with regard to three deaths and injury to travellers in Jeep No. HR- 15-2531 because of rash and negligent driving of the aforesaid jeep by Jagjit Singh, its driver.

FAO No. 1492 of 2001

The claimants are in appeal seeking enhancement of compensation on account of death of Ram Dia Pawar. The Tribunal has awarded compensation of Rs. 3,31,920/-, detailed hereunder:-

Monthly income of the deceased	Rs. 3893/-
Deduction for personal expenses	1/3rd
Multiplier	10
Loss of dependency	Rs. 3,21,920/-
Expenses on last rites	Rs. 10,000/-

Counsel for the claimants would urge that the deceased was working as Assistant Sub Inspector with the Delhi Society for Prevention of Cruelty to Animal at salary of Rs. 4572/- per month, as reflected in the salary slip Ex. P2. It is argued that the Tribunal has computed loss of dependency on the basis of carry home salary of the deceased i.e. Rs. 3893/- per month but the entire salary is required to be taken into consideration for assessing loss of dependency. In addition, it is argued that as the application for compensation was filed by the widow and four minor children of the deceased, held to be dependent upon his income, admissible deduction for personal expenses should be 1/4th. For this purpose, reference has been made to judgment of Hon'ble the Supreme Court **Smt.Sarla**

Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298. Claimants may be allowed benefit of increase in income for future prospects @ 25% and adequate compensation under conventional heads.

Counsel representing the insurance company has supported assessment made by the Tribunal with the plea that claimants have been adequately compensated.

Perusal of salary slip Ex. P2 would reveal that entire salary is to be taken into account for computing loss of dependency and two deductions made from the salary pertain to provident fund Rs. 304/- and insurance premium Rs. 375/-. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Limited vs. Indira Srivastava and others 2008(1)RCR (Civil) 359** and **Manasvi Jain vs. Delhi Transport Corporation 2014 (3) RCR (Civil) 313.**

As has been rightly argued by counsel for the claimants, admissible deduction for personal expenses, in the given scenario, would be $1/4^{th}$. Claimants shall be entitled to increase in income for future prospects @ 25%. The Tribunal has applied multiplier of 10. As the deceased was 42 years of age, admissible multiplier would be 14. In this manner, loss of dependency comes to **Rs. 7,20,090/-** [4572 x12 x14= 7,68,096 + 1,92,024(25%)= 9,60,120 -2,40,030 ($1/4^{th}$)].

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC**

1270, detailed hereunder :-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is Rs. 7,90,090/- and the additional amount is **Rs. 4,58,170/-** (7,90,090 – 3,31,920), payable with interest @ 7.5% per annum from the date of petition till realization, in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No. 1494 of 2001

With regard to death of Sunil Kumar, the Tribunal has awarded compensation of Rs. 4,45,072/-, detailed hereunder:-

Monthly income of the deceased	Rs. 3400/-
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	Rs. 4,35,072/-
Expenses on transportation and last rites	Rs. 10,000/-

Counsel for the appellants would argue that income of the deceased assessed by the Tribunal is not based on evidence on record and in view of testimony of Satbir Singh, Clerk, NCC Group Headquarters (Rohtak) PW7 who has proved salary certificate Ex. P5, containing details of pay and other incentives available to the deceased. It is further argued that besides working with NCC Headquarters, deceased had been working as a part time typist with an advocate and earning Rs. 1500/- per month. The application for compensation has been filed by the widow, two children and mother of the deceased, therefore, admissible deduction for personal expenses should be 1/4th . The deceased was 27 years old and in the light of judgment in **Smt. Sarla Verma and others ' case (supra)**, multiplier of 17 is required to be allowed. Claimants are entitled to benefit of increase in income for future prospects @ 40%. Adequate compensation may be allowed under conventional heads.

Counsel representing the insurance company has supported assessment made by the Tribunal on the premise that claimants have been adequately compensated. It is further argued that testimony of Sh. R.M.Gupta, Advocate with regard to the deceased working as a part time typist with him does not find corroboration from any documentary evidence.

The claimants examined Satbir Singh, a representative from the NCC Group Headquarters, Rohtak. A relevant extract from his testimony, reads as follows:-

> "I have brought the summoned record concerning salary of deceased-Sunil Kumar Balhara. He was working as salesman in the N.C.C.Group Headquarter Canteen. His last pay certificate including the other incentives, which he was getting, is Ex. P5."

The witness was not cross examined by counsel for the respondents before the Tribunal despite an opportunity given for the purpose meaning thereby that there is no challenge to his testimony with regard to avocation of the deceased and salary certificate Ex. P 5.

Perusal of salary certificate would reveal the details of pay and allowances drawn by the deceased at the time of death, quoted thus:-

"Last pay drawn	Rs. 3400/- PM
Yearly Incentive	Rs. 3400/- Per year
Quantitative Discount	Rs. 3,000/-per year (Appx.)

Quarterly Bonus	Rs. 5,000/-per year (Appx.)
Leave encashment	Rs. 3,400/- per year (30 days pay)".

With regard to quantitative discount and quarterly bonus to the tune of Rs. 3,000/- and Rs. 5,000/- per year respectively, words "appx." are used which means the amount mentioned is not fixed but approximately. However, there is nothing on record suggestive of the fact that had the deceased remained alive, he would not have been entitled to quantitative discount and quarterly bonus. Even if there may be little fluctuation here or there in the coming years, claimants cannot be denied benefit of these incentives/allowances for computing loss of dependency. Taking into consideration the last pay drawn and other benefits available to the deceased, annual income comes to Rs. 3400 x 12=40,800 + 3000 + 5000+3400= 52,200/-.

So far as plea of the claimants with regard to their entitlement to loss qua income as a part time typist with Sh. R.M.Gupta, Advocate, there is nothing on record suggestive of the fact that the deceased had obtained any training much less a diploma in typing to render services as a typist. In NCC Group Headquarters, he was employed as a salesman and not as a typist. In the circumstances, the Tribunal has rightly rejected plea of the claimants for allowing loss of income as a typist with Sh. R.M.Gupta, Advocate.

The application for compensation was filed by the widow, two minor children and mother of the deceased. Deduction for personal expenses would be 1/4th in the light of enunciation laid down in **Smt. Sarla Verma and others ' case (supra).** The admissible multiplier in the light of aforesaid judgment would be 17. The claimants shall be entitled to increase in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs.9,31,770/- [52,000 x 17 = 8,87,400+ 3,54,960 (40%) = 12,42,360 - 3,10,590(1/4th)].

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of judgment of Hon'ble the Supreme Court **Pranay Sethi and others' case (supra),** detailed hereunder :-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is Rs. 10,01,770/- and the additional amount is Rs. 5,56,698/- (10,01,770 – 4,45,072), payable with interest @ 7.5% per annum from the date of petition till realization, in terms of the award passed by the Tribunal.

The appeal is partly allowed in the aforesaid terms.

FAO No. 3035 of 2001

With regard to death of Rajesh Kumar, the Tribunal has awarded an amount of Rs 1,68,400/-, detailed hereunder:-

Monthly income of the deceased	Rs. 1800/-
Deduction for personal expenses	1/3rd
Multiplier	11
Loss of dependency	Rs. 1,58,400/-
Expenses on last rites	Rs. 10,000/-

The Tribunal has assessed income of the deceased at Rs. 1800/- per month as against plea of the claimants that he was earning Rs. 2000/- per month. Claimants have failed to adduce sufficient evidence on record to establish their plea that Rajesh Kumar aged 22 years was doing dairy business and cultivation of agricultural land. The occurrence in question took place on 2.3.1998. The minimum wage at the relevant time was less than Rs. 1800/- per month. The deceased was matriculate and holder of certificate of ITI Course in Turner. In the given scenario, income of the deceased assessed by the Tribunal is liable to be affirmed and ordered accordingly.

The Tribunal has applied deduction for personal expenses to the extent of 1/3rd. Application for compensation has been filed by parents of the deceased as he was unmarried. However, the Tribunal has applied multiplier of 11 by taking a view that dependency of the parents would have obviously decreased substantially after Rejesh Kumar got married and had his own family. When the case is examined in the light of enunciation laid down by the Apex Court in **Smt. Sarla Verma and others ' case (supra)**, admissible deduction for personal expenses would be 50% but multiplier being 18. As the deceased was 22 years old, claimants shall be entitled to benefit of increase in income for future prospects @ 40%. In this manner, loss of dependency comes to Rs. 2,72,160/- [1800 x12x18= 3,88,800 + 1,55,520 (40%)= 5,44,320 – 2,72,160 (50%)].

Under conventional heads, claimants shall be entitled to Rs. 30,000/- in the light of judgment in **Pranay Sethi and others' case (supra),** detailed hereunder :-

Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

Total compensation is Rs. 3,02,160/- and the additional amount is Rs. 1,33,760/- (3,02,160- 1,68,400), payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

19.4.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No