In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 13.12.2018

FAO No. 4918 of 2005(O&M)

Lakshmi Devi and others

---Appellants

versus

Hem Raj and others

---Respondents

FAO No. 4919 of 2005(O&M)

Vidya Devi and another

---Appellants

versus

Hem Raj and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. M.K.Singla, Advocate
for the appellants

Mr. Paul S.Saini, Advocate,
and Mr. Vipul Sharma, Advocate
for the insurance company

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Rekha Mittal, J.

This order will dispose of FAO Nos. 4918 and 4919 of 2005 as these have emerged out of common award dated 16.5.2005 passed by the Motor Accidents Claims Tribunal, Sangrur (in short “the Tribunal”) whereby compensation has been assessed on account of death of Banwari Lal and Pawan Kumar in a motor vehicular accident that took place

2.8.2004.

FAO No. 4918 of 2005 has been filed by Lakshmi Devi and others for enhancement of compensation in regard to death of Banwari Lal whereas the other appeal has been preferred by Vidya Devi and another, parents of deceased Pawan Kumar.

Counsel for the appellant failed to file an application for impleading legal representatives of respondent No. 1 in terms of order dated 9.12.2016. As a consequence, appeals against respondent No. 1 are dismissed.

FAO No. 4918 of 2005

The Tribunal has awarded compensation of Rs. 2,43,500/-, detailed hereunder:-

Monthly income of the deceased	Rs. 2000/-
Deduction for personal expenses	$1/4^{th}$
Multiplier	13
Conventional heads	Rs. 9500/-

Plea of the claimants is that the deceased was working at Sweets shop thereby earning Rs. 4000/- per month. The claimants failed to adduce cogent much less satisfactory evidence to prove avocation and income of the deceased. Taking into consideration minimum wage of an unskilled worker at the relevant time, income of the deceased is assessed at Rs. 2260/- per month. Taking into consideration the number of claimants, even if claim of Rameshwar father of the deceased is excluded, deduction for personal expenses would be $1/5^{th}$. Addition in income for future prospects would be 40%. Multiplier applied by the Tribunal is correct and affirmed. In this manner, loss of dependency is calculated at Rs. 3,94,867/-

[2260 x 12 x 13= 3,52,560+1,41,024 (40%)= 4,93,584 -98,717 ($1/5^{th}$)].

Under conventional heads, claimants shall be entitle to Rs. 70,000/-, 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. 4,64,867/- and the additional amount is Rs.2,21,367/- (4,64,867-2,43,500), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the deceased, to be invested in fixed deposit for a period of three years. The recovery right given to the insurance company shall be available against owner/insured of the vehicle as no recovery right can be given against the driver for want of privity of contract between the insurer and driver.

FAO No. 4919 of 2005

The Tribunal has awarded compensation of Rs. 2,12,300/-. In view of findings recorded in FAO No. 4918 of 2005, income of the deceased is assessed at Rs. 2260/- per month. Deduction for personal expenses would be 50% and addition in income 40%. As the deceased was 18 years old, appropriate multiplier is 18. In this manner, loss of dependency is Rs.3,41,712/- [2260 x 12 x 18 = 4,88,160 +1,95,264 =6,83,424 -3,41,712(50%)].

Under conventional heads, claimants are entitled to Rs. 30,000/- i.e. Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss to estate.

Total compensation is Rs. 3,71,712/- and the additional amount is Rs. 1,59,412/-(3,71,712-2,12,300), payable with interest @ 7.5% per annum from the date of petition till realization to mother of the deceased.

The appeals are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

13.12.2018
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No