

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

FAO Nos.2258 to 2261 of 2008 (O&M)

Date of decision : 14.05.2018

Jitender

...Appellant

Versus

Rajender Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lalit Kumar, Advocate for the appellant.

Mr. R.N. Singal, Advocate
for respondent No.3-Insurance Company.

ANIL KSHETARPAL, J. (ORAL)

CM No.14556-CII of 2008 in FAO No.2258 of 2008

For the reasons stated in the application, which is duly supported by an affidavit, delay of 48 days in filing the appeal is condoned.

Application is allowed.

Main appeals

Vide this common judgment four appeals bearing FAO Nos.2258 to 2261 of 2008 shall stand disposed of. Learned counsel for the parties are also agreed that these appeals which arises out of the motor vehicular accident, can be conveniently disposed of by a common judgment.

The claimants are in appeal seeking enhancement of the compensation. Four members of the family died in unfortunate accident

which took place in the intervening night of 14/15.11.2002. In fact, Sham Lal, Rajesh and Jyoti died immediately whereas Smt. Kailash died subsequently after filing of the claim petitions. Now other son i.e. Jitender Kumar is in appeal. With regard to the appeal filed on account of the death of Sham Lal, learned trial Court has awarded a sum of ₹3,22,000/- without taking into consideration the increase in income on account of future prospects as per Constitutional Bench in case of Pranay Sethi and awarded an amount of ₹10,000/- as funeral and transportation expenses.

Learned counsel for the appellant contends that although multiplier applied is higher but his client would be entitled to enhancement on account of the future prospects to the extent of 25%.

Learned counsel has further submitted that in all the cases under conventional heads, the appellant should be awarded the amount as per the judgment passed by the Constitution Bench in the case of *National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017(10) SC 450*. It may be noted that in the cases arising from the death of Late Sh. Sham Lal and Rajesh, there is no dispute with regard to the income assessed. Hence, the compensation payable to the claimants are re-worked as under:-

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<i>Death Case</i>	
Name of the deceased	Sham Lal
Date of Award	31.07.2007
Amount of compensation	₹3,22,000/-
Date of Accident	14-15/11/2002
Age of the deceased	50 years
Occupation	SCRAP BUSINESS

Heads	Awarded by the Motor Accident Claims Tribunal	Awarded by the High Court
Income assessed	₹3000/- per month	₹3000/-
Deduction	(-) 1/3 rd (₹1000) = ₹2000	(-) 1/3 rd (₹1000) = ₹2000
Multiplier = 13	₹2000 x 12 x 13 = ₹3,12,000/-	₹2000 x 12 x 13 = ₹3,12,000/-
Future Prospects	NIL	25% (₹78000) = ₹3,90,000/-
Loss of Consortium	NIL	₹40,000/-
Loss of Estate	NIL	₹15,000/-
Funeral & Transportation Expenses	₹10,000/-	₹15,000/-
Total	₹3,22,000/-	₹4,60,000/-

Death Case		
Name of the deceased	Rajesh	
Date of Award	31.07.2007	
Amount of compensation	₹3,94,000/-	
Date of Accident	14-15/11/2002	
Age of the deceased	19 years	
Occupation	Student	
Heads	Awarded by the Tribunal	Awarded by the High Court
Income assessed	₹3000/- per month	₹3000/-
Deduction	(-) 1/3 rd (₹1000) = ₹2000/-	½ (as he is bachelor) – (₹1500) = ₹1500
Dependency	₹2000 x 12 = ₹24000	1500 x 12 = ₹18000
Multiplier	₹24000 x 16 = ₹3,84,000/-	₹18000 x 18 = ₹3,24,000/-
Future Prospects	NIL	40% (₹1,29,600) = ₹4,53,600/-
Loss of Consortium	NIL	NIL
Loss of Estate	NIL	₹15,000/-
Funeral & Transportation Expenses	₹10,000/-	₹15,000/-
Total	₹3,94,000/-	₹4,83,600/-

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With respect to appeal arising on account of the death of Smt. Kailash who died on 26.04.2003, learned counsel for the appellant submits that Smt. Kailash was a house wife and the Tribunal has assessed the income at ₹2,000/- per month without examining that the house wife being the home maker, her services should at least be considered equivalent to the minimum wages. The argument of the learned counsel for the appellant is strongly opposed by the learned counsel for the Insurance Company. It is well settled that the services of the house wife are invaluable. She not only manages the house but also manages all the members of the family. Hence, the income of the house wife cannot be undermined.

In case of Kailash, the income is assessed at ₹3,000/- which was the minimum wages on the date of the accident. Counsel has further submitted that in para 28 of the judgment, the Court has itself found that ₹50,000/- was spent on the treatment. However, the Court did not award any amount while calculating the amount payable. He further submits that for conventional heads, the claimant shall be entitled to ₹70,000/- being loss of consortium, loss of estate and funeral expenses. He has further submitted that as per the judgment passed by the Constitution Bench in Pranay Sethi's case (Supra), the increase in the income on account of the future prospects @ 25% shall be added to the income of Smt. Kailash. Hence, the compensation is re-worked as under:-

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<i>Death Case</i>	
Name of the deceased	Kailash
Date of Award	31.07.2007
Amount of compensation	₹2,80,000/-

Date of Accident	14-15/11/2002	
Age of the deceased	45 years	
Occupation	House Wife	
Heads	Awarded by the Tribunal	Awarded by the High Court
Income assessed	₹2000/- per month	₹3000/- per month
Deduction	(-) 1/3 rd (-₹500) = ₹1500/-	-1/3 rd (₹1000) = ₹2000/-
Dependency	₹1500 x 12 = ₹18000	₹2000 x 12 = ₹24000
Multiplier	₹18000 x 15 = ₹2,70,000/-	₹24000 x 14 = ₹3,36,000/-
Future Prospects	NIL	25% (₹84,000) = ₹4,20,000/-
Medical Expenses	NIL	₹50,000/-
Loss of Consortium	NIL	₹40,000/-
Loss of Estate	NIL	₹15,000/-
Funeral & Transportation Expenses	₹10,000/-	₹15,000/-
Total	₹2,80,000/-	₹5,40,000/-

”

FAO No.2261/2008

This case arises out of the death of Late Ms. Jyoti who died at the young age of 17 years. The claim petition was filed by the mother, who also had unfortunately expired. Learned Tribunal has assessed the income only at ₹80/- per month considering that she was only a student. A student of 17 years old, if stops studying would at least be able to get the minimum wages, therefore, the Court should not have undermined the services of the female. These days, females earn equivalent to the males.

In view of the aforesaid, her income is re-worked on the basis of the minimum wages and as per the judgment passed in Praney Sethi's case (Supra), the amount of compensation is re-worked as under:-

<i>Death Case</i>		
Name of the deceased	Jyoti	
Date of Award	31.07.2007	
Amount of compensation	₹1,45,000/-	
Date of Accident	14-15/11/2002	
Age of the deceased	17 years	
Occupation	Student	
Heads	Awarded by the Tribunal	Awarded by the High Court
Income assessed	₹80/- per month or ₹900 per annum	₹3000/- per month
Deduction	NIL	-1/2 nd (-₹1500) = ₹1500
Annual Dependency	₹900	₹1500 x 12 = ₹18000
Multiplier	(₹900 x 15) = ₹13,500/-	(₹18000 x 18) = ₹3,24,000/-
Future Prospects	NIL	40% (₹1,29,600) = ₹4,53,600/-
Loss of Consortium	NIL	NIL
Loss of Estate	NIL	₹15,000/-
Funeral & Transportation Expenses	₹10,000/-	₹15,000/-
Total	₹1,45,000/-	₹4,83,600/-

Note:- An arithmetical mistake has been committed by Motor Accident Claims Tribunal. The correct calculation is ₹900 x 15 = ₹13,500/- but Tribunal took it as ₹1,35,000/-.”

In view of the discussion made above, all the four appeals are allowed. The amount of enhanced compensation as worked out in tables above shall be payable alongwith interest at the rate of 7.5% p.a. from the date of the accident till the date of the payment.

14.05.2018
Pawan

(ANIL KSHETARPAL)
JUDGE

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