IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 5009 of 2010(O&M)
Date of Decision: 05.07.2018

Balraj and another

......Appellants.

Versus

Kesha and others

...... Respondents.

AND

F.A.O. No. 5010 of 2010(O&M)

Ram Ratti and another

......Appellants.

Versus

Keshav and others

...... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Harish Nain, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no.3.

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LISA GILL, J.

This order shall dispose of FAO No. 5009 of 2010 and FAO No. 5010 of 2010 as both of them arise out of the common award dated 22.04.2010, wherein two claim petitions were decided. For the sake of convenience, facts are being extracted from FAO No. 5009 of 2010.

Appellants-claimants, who are parents of Sajjan Singh (deceased) and parents-in-law of Nirmal (deceased), seek enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Hisar (for short 'MACT'), vide impugned award dated 22.04.2010 on account of death of said Sajjan Singh and Nirmal.

As per the averments in the claim petitions under Section 166 of the Motor Vehicle Act, preferred by the claimants-appellants, it is stated that Sajjan Singh and his wife-Nirmal were going to their native village Khairi from village Thurana on a motorcycle bearing registration no. HR-21-B-3824. The brother-in-law of Sajjan Singh namely Satyawan son of Hawa Singh was following them. An accident was caused due to rash and negligent driving of the offending truck bearing registration No. RJ-06-GA-1445, which hit Sajjan Singh's motorcycle. Both Sajjan Singh and Nirmal received injuries. Nirmal died on the spot and Sajjan Singh succumbed to his injuries on the same day at CMC, Hospital, Hisar. FIR No. 90 dated 08.03.2009, under Sections 279, 337, 304-A IPC was registered against respondent-Keshav.

Claimants preferred separate claim petitions seeking compensation to the tune of ₹15 lakhs on account of death of Nirmal and a sum of ₹25 lakhs on account of death of Sajjan Singh. Deceased-Nirmal, it was averred, was earning a sum of ₹10,000/- per month from dairy farming and Sajjan Singh was stated to be employed as a driver earning ₹15,000/- per month.

Learned tribunal on considering the facts and circumstances of the case awarded a sum of ₹2,69,000/- as compensation on account of death of Nirmal. Her income was assessed as ₹3000/- per month being a house wife, deduction of 1/3rd was effected, multiplier of 11 was applied keeping in view the age of the claimants.

In respect to the death of Sajjan Singh, a sum of ₹3,40,280/-

was awarded while assessing his income to be ₹3810/- per month, deduction of 1/3rd was effected, a multiplier of 11 was applied keeping in view the age of the claimants.

Learned counsel for the appellants in respect to the compensation awarded on account of death of Nirmal submits that even if it is accepted that no evidence was led in respect to the business of dairy farming, income of the deceased-Nirmal has been assessed at a very low rate even while considering her to be a house wife. Moreover, deduction of 1/ 3rd should not have been effected. Nothing has been awarded on account of loss of estate and funeral expenses. In respect to the appellant-Sajjan Singh, it is submitted that specific evidence was led by the claimants to show that the deceased was working as a truck driver with Gurmeet Singh-PW-7, who has sworn his affidavit Ex.PW7/A to the effect that deceased-Sajjan Singh was employed with him as driver and receiving a salary of ₹6750/- + ₹115 as daily expenses i.e. a total salary ₹10,200/-. Nothing has been awarded in respect to compensation on account of loss of future prospects or loss of estate and a meagre amount has been awarded on account of funeral expenses. It is thus prayed that compensation awarded to the appellants be enhanced.

Learned counsel for the insurance company, however, submits that compensation has been reasonably assessed by the learned tribunal and there is no scope for any further enhancement. It is sought to be urged that the claimants are not entitled to any compensation in respect to deceased-Nirmal. Learned counsel prays for dismissal of both the appeals.

I have heard learned counsel for the parties and have gone through the file.

It is not denied by learned counsel for respondent No.3 that insurance company has not filed any appeal in respect to the compensation awarded on account of death of Nirmal. No objection was ever raised by the insurance company, at any stage, in this regard. Therefore, the same is not to be countenanced, at this stage.

Learned counsel for the insurance company is unable to deny that as per the settled position of law, deduction on account of personal expenses should not be effected in case of a house wife. Similarly, she is unable to deny that the multiplier has to be applied with regard to the age of the deceased and not of the complainant as has been held by the Hon'ble Supreme Court in **Munna Lal Jain v. Vipin Kumar Sharma**, ***(2015) 6 SCC 347***. Therefore, in this case, multiplier of 18 is required to be applied as the deceased-Nirmal was admittedly 22 years old at the time of accident. Income of deceased-Nirmal has been rightly assessed as ₹3000/- per month. I do not find any ground for enhancement in this respect. However, the compensation on account of funeral expenses is indeed meagre. Compensation in respect to deceased-Nirmal is re-worked as under:-

Sr. No.	Heads of Claim	Amount
1.	Loss of dependency (3000x12x18)	6,48,000/-
2.	Loss of estate	15,000/-
3.	Funeral expenses	15,000/-
	Grand Total	6,78,000/-

Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petition till realization.

In respect to the deceased-Sajjan Singh, the income assessed is considered appropriate for the reason that not even a driving licence has been produced on record to indicate that the deceased was working as a truck driver. Therefore, the learned Tribunal has rightly ignored the statement of PW-7-Gurmeet Singh, especially in the absence of any other evidence on record. Income of Sajjan Singh has been rightly assessed to be ₹3810/- per month and deduction of 1/3rd has been correctly effected. However, future prospects at the rate of 40% are required to be awarded keeping in view the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and Ors.** ***2017(4) R.C.R. (Civil) 1009***. Furthermore, multiplier of 18 has to be applied keeping in view the age of Sajjan Singh i.e. 25 years at the time of the accident as per the observations of the Hon'ble Supreme Court in **Munna Lal Jain's case** (supra). The claimants are also entitled to ₹30,000/- under the conventional heads i.e., ₹15,000/- for loss of estate and ₹15,000/- for funeral expenses. Compensation in respect to deceased-Sajjan Singh, is re-worked as under:-

Sr. No.	***Heads of Claim***	***Amount***
1.	Income	3810 p.m.
2.	Total income after addition of future prospects at the rate of 40%	3810+ (3810*40%=1524) = 5,334
3.	Deduction of 1/3rd on account of personal expenses	5,334 – (5,334*1/3=1778) = 3,556
4.	Dependancy while applying multiplier of 18	3556x12x18 = 7,68,096
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
	Grand Total	₹7,98,096/-

Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of petitions till realization. Needless to say the amount already disbursed to the claimants shall be deducted in both the appeals.

Apportionment of amount of compensation amongst claimants shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, both the appeals are disposed of.

[LISA GILL]
Judge

05.07.2018
s.khan

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