IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O. No.3145 of 2012 (O&M)
Date of Decision: 12.03.2018

The Oriental Insurance Co. Ltd.

....Appellant (s)

Versus

Sukhvir Kaur & others

...Respondent(s)

F.A.O. No.3824 of 2012 (O&M)

Sukhvir Kaur & another

....Appellant (s)

Versus

Mohammad Mustafa & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Vinod Khunger, Advocate and
Mr. Sahil Khunger, Advocate
for the appellant(s) in F.A.O. No.3145 of 2012 &

Mr. Denesh Goyal, Advocate and
Mr. Ajay Aggarwal, Advocate
for respondents no.1 and 2 in F.A.O. No.3145 of 2012 and
for the appellant(s) in FAO No.3824 of 2012.
Mr. L.S. Mann, Advocate
for respondents no.3 and 4 in FAO-3145-2012 &
for respondents no.1 and 2 in FAO-3824-2012
Mr. Vinod Chaudhri, Advocate
for respondent no.3 in F.A.O. No.3824 of 2012.

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HARI PAL VERMA, J. (Oral)

This order shall dispose of two appeals i.e. FAO-3145-2012 The Oriental Insurance Company Limited Vs. Sukhvir Kaur and others, filed on behalf of the insurance company and FAO-3824-2012 *Sukhvir Kaur & another v. Mohammad Mustafa & others,* filed on behalf of the claimants, as the same have arisen out of a common award dated

23.01.2012 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as "the Tribunal"), whereby the claim petition filed by the respondent-claimants was allowed and the Tribunal awarded compensation of Rs.14,75,000/- in favour of the claimants. By way of FAO-3145-2012, the appellant-insurance company has challenged the impugned award, whereas by way of FAO-3824-2012, the claimants have sought enhancement of compensation over and above the compensation awarded by the Tribunal. However, for brevity, the facts are being noticed from FAO-3145-2012.

Briefly stated, on 24.10.2009, Jagpreet Singh along with Harwinder Singh son of Harnam Singh, resident of Vill. Barkandi, District Muktsar were coming from Muradabad to Delhi in a Scorpio vehicle No.DL-13-C-1717. Jagpreet Singh was driving the Scorpio vehicle. When they reached near Muslim Dhaba (Pehalwan Dhaba) on National Highway No.24, Gajraula, a bus bearing No.DL-1PC-9254, which was coming from Delhi side towards Muradabad in a rash and negligent manner at a very high speed, struck against the Scorpio vehicle from the wrong side. As a result thereof, Jagpreet Singh and Harwinder Singh died at the spot, whereas some passengers of the bus suffered injuries. For this accident, FIR No.1818 dated 24.10.2009 under Sections 279/337/304-A/427 IPC was registered.

The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, "the Act") seeking compensation on account of death of Jagpreet Singh, who was 35 years of age and was working as Accountant with various firms. He was earning Rs.70,000/- per month from different liquor firms while working for them as Accountant. The deceased left behind his widow namely Sukhvir Kaur and a minor son namely Harkanwal Singh.

The Tribunal returned a finding that the deceased Jagpreet Singh has died in a motor vehicular accident which was caused by the offending bus bearing No.DL-1PC-9254, which was being driven in a rash and negligent manner. It has been held that though the claimants have tried to prove the receipt of vouchers of salaries paid to deceased Jagpreet Singh by various firms, but no such certificate was produced regarding the income of the deceased prior to 01.04.2009. Thus, the Tribunal while considering the monthly income of the deceased as Rs.12,000/- and applying 1/3rd deductions towards personal expenses of the deceased and multiplier of '15', awarded total compensation of Rs.14,75,000/-, which also included Rs.10,000/- towards 'Loss of Consortium', Rs.10,000/- towards 'funeral expenses and Rs.15,000/- towards 'loss of estate' along with interest @ 6% per annum. The relevant part of the reasoning given by the Tribunal i.e. paragraph 14 of the impugned award reads as under:-

> *"14. I have given careful thought to the respective submissions and have also gone through the statement of CW-3 Arvinder Paul who is employed as Deputy General Manager with four concerns namely Dhillon Traders, Royal Wines, Akash Enterprises and Akash Traders having its head office at D-112, Vivek Vihar, New Delhi. Similarly, inquest proceedings Ex.C-3 reveals that in the said proceedings, address of the deceased has been given as Jagpreet Singh son of HK Singh resident of D-112, Vivek Vihar Delhi which is also the address given on post mortem report of*

Jagpreet Singh and on various other documents wherein Jagpreet Singh is reflected to be resident of D-112, Vivek Vihar, Delhi. The said address also happens to be the address of the head office of Dhillon Distributor Wine Contractor. Thus it is clear that salary certificates proved on record by CW-3 Arvinder Paul, refer to Jagpreet Singh deceased. The next question would be as to whether the said certificates conclusively establish the income of deceased. Perusal of the certificate reveals that the same refer to the employment of deceased with the said firms w.e.f. 1.4.2009 only prior to which there is no proof of the income of deceased. As per the said certificates deceased was earning Rs.47,500/- per month from four firms for the last seven months only. Even if it is accepted that Rs.47,500/- per month was the regular income of deceased for the last seven months, there are no Income Tax Returns of the deceased placed on record by the Kalimantan No.1 which would have been filed, had the deceased been earning such a huge amount over a span of more than one year. In the absence of Income Tax Return, the income of deceased cannot be said to be taxable. In these circumstances, the monthly salary of deceased is assessed to be Rs.12000/-. The deceased left behind a widow and one minor child. In view of law laid down in the case Sarla Verma Vs. Delhi Transport Corporation and another 2009 ACJ 1298 (S.C.), deduction of 1/3rd salary of deceased is required to be made towards personal and living expenses of deceased and annual dependency of deceased thus would come to Rs.96,000/- (i.e. Rs.8000x12).”

Aggrieved from the aforesaid award, the appellant-insurance company has preferred the present appeal for setting aside the impugned award.

Learned counsel for the appellant-insurance company has argued that even if it is accepted that the deceased was working as an Accountant, the respondent-claimants were required to prove that the deceased was earning Rs.12,000/- per month from various liquor firms and therefore, the Tribunal has wrongly assessed the income of the deceased. In absence of any evidence, the Tribunal was required to award compensation considering the income of the deceased as per the minimum wages prescribed for an unskilled worker at the relevant time.

On the other hand, learned counsel for the respondent-claimants, has argued that the deceased Jagpreet Singh was a Graduate and was working as an Accountant with various liquor firms. He was rendering service to various liquor contractors, as an Accountant and from each such concern, he was drawing Rs.12,000/- per month, as salary. Learned counsel has referred to salary certificate Ex.CW-3/A of Dhillon Distributors, Ex.CW-4/A issued by Royal Wines, Ex.CW-5/A and Ex.CW-6/A issued by Akash Enterprises and Akash Traders, respectively, to contend that the deceased Jagpreet Singh was employed by all these four sister concerns for the period from 01.04.2009 to 23.10.2009 i.e. till the date of his death. All these sister concerns were paying him a salary ranging between Rs.11,500/- to Rs.12,000/- per month each and therefore, the income of the deceased should have been assessed over Rs.40,000/- per month.

Learned counsel for the respondent-claimants has further argued that the deceased being 35 years of age, the multiplier of '16' was required to be applied instead of '15', as per the judgment of Hon'ble the Apex Court in the case of ***Sarla Verma & Ors vs Delhi Transport Corp and another (2009) 6 SCC 121.*** Similarly, the respondent-claimants are also entitled for compensation under the head 'future prospects' as well as 'other conventional heads' in view of judgment of Hon'ble the Apex Court in the case of ***National Insurance Co. Ltd vs. Pranay Sethi 2017(4) RCR (Civil) 1009***.

I have heard learned counsel for the parties and perused the impugned award.

There is no dispute that the deceased Jagpreet Singh was working as an Accountant with liquor contractors. CW-3 Arvinder Paul had come forward to state that the deceased was earning Rs.12,000/- per month. The plea of learned counsel for the respondent-claimants that he was drawing more than Rs.40,000/- per month cannot be accepted in the absence of any cogent evidence/document. As per the claim petition and as argued by learned counsel for the appellant-insurance company, the deceased was working as an Accountant for the period from 01.04.2009 to 23.10.2009 i.e. uptil the date of his death, but there is no reference, even remotely, as to whether he was working with all the aforesaid contractors, as an Accountant. No income tax return has been produced before the Tribunal to satisfy the Tribunal that the deceased was drawing salary of Rs.40,000/- per month. Had he been drawing this much of salary, he would have been subject to income tax assessment. In absence of any such cogent evidence, this Court finds that there is no reason to disturb the findings so recorded by the Tribunal, so far as the salary of the deceased @ i.e. Rs.12,000/- per month is concerned. Accordingly, the finding recorded by the Tribunal to the effect that the deceased was earning Rs.12,000/- per month, is upheld.

As regards the applicability of multiplier, there is no dispute that the deceased was 35 years of age and therefore, having recourse to judgment of Hon'ble the Apex Court in the case of ***Sarla Verma*** (*supra),* the multiplier of '16' was required to be applied instead of '15'. Similarly, in view of law laid down by Hon'ble the Apex Court in the case of ***Pranay Sethi*** (*supra*), the claimants are also entitled for addition in income towards 'future prospects' @ 40% apart from a total sum of Rs.70,000/- under the other conventional heads. However, since the total annual income of the deceased falls within the taxable limits, this Court finds that the entire enhanced amount of compensation shall be subject to deduction of income tax at source.

Accordingly, the appeal i.e. FAO-3145-2012, filed on behalf of the insurance company, is dismissed and the FAO-3824-2012, filed on behalf of the claimants, is allowed. The impugned award is modified to the extent that the appellant-claimant shall be entitled for an enhanced amount of Rs.6,99,693.33 over and above the amount of compensation already granted to them, in the following manner:-

S.No.	**Heads**	**Calculation (Rs.)**
1	**Income**	12,000.00
2	**Future prospects (**40%)	4,800.00
3	**Total monthly income**	16,800.00

4.	**Annual income**	2,01,600.00
5.	**Income Tax**	4,285.00
6.	**Annual income (after tax deduction)**	1,97,315.00
7.	**Deductions towards personal expenses of the deceased** (1/3rd)	65772.67
8.	**Annual dependency** (*Annual income after tax deductions towards personal expenses of deceased)*	1,31,543.33
9.	**Multiplier**	17
10.	**Total loss of dependency** *(Annual dependency x multiplier)*	21,04,693.33
11.	**Conventional Heads:**	
	Loss of estate	15,000.00
	Funeral expenses	15,000.00
	Loss of consortium	40,000.00
12.	**Total amount of compensation**	21,74,693.33
13.	**Amount already awarded**	14,75,000.00
14.	**Total Enhancement**	6,99,693.33

It is further ordered that the enhanced amount of compensation shall be released to the claimants in same proportion and manner, as granted by the Tribunal and this enhancement shall fetch interest @ 7.5% per annum from the date of filing the claim petition till its realization.

March 12, 2018 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No
Whether reportable? Yes / No