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

(1)

FAO No.3839 of 2012 (O&M)
Date of Decision: May 01, 2018.

Poonam since deceased through her LR Sameer son of Ravinder

..........APPELLANT(s).

VERSUS

Sat Parkash and others

........RESPONDENT(s).

(2)

FAO No.3840 of 2012 (O&M)

Sameer

..........APPELLANT(s).

VERSUS

Sat Parkash and others

........RESPONDENT(s).

(3)

FAO No.4892 of 2012 (O&M)

Hari Ram and others

..........APPELLANT(s).

VERSUS

Sat Parkash and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Navneet Singh, Advocate
for the appellant (s).

Mr. Lalit Garg, Advocate
for respondent-insurance company.

Mr. Sunny Namdev, Advocate
for respondent Sat Parkash.

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<u>SURINDER GUPTA, J.</u>

The appeals captioned above have been taken up together for disposal as these arise from award dated 03.04.2012 passed by Motor Accident Claims Tribunal, Sonepat (later referred to as 'the tribunal') relating to death of Smt. Laxmi (later referred to as 'the deceased') and injuries to Smt. Poonam and master Sameer in a motor vehicle accident on 01.03.2010 with Trax bearing registration No.HR-56-3345 (later referred to as 'the offending vehicle').

Appeal bearing FAO Nos.3839 of 2012 and 3840 of 2012 have been filed by claimant-injured Poonam and Sameer seeking enhancement of compensation while in FAO No.4892 of 2012 appellants-claimants have sought enhancement of compensation awarded by the tribunal for death of Smt. Laxmi.

As the only issue involved in both these appeals is quantum of compensation, the detailed facts relating to the accident are being skipped for the sake of brevity.

<u>FAO 3839-2012</u>

Learned counsel for the appellant has argued that claimant Poonam has since expired, as such, he confines his submission for enhancement of compensation as claimed by her minor son under non-pecuniary heads i.e. transportation, attendant charges and special diet. He has argued that claimant Poonam after the accident was taken to Bandi Kui Hospital from where she was referred to another hospital in Alwar and then to PGIMS, Rohtak, where she remained admitted upto 10.04.2010. She had suffered multiple fractures on different parts of her body. She was thereafter treated as indoor patient in the hospital from 27.09.2010 to 01.10.2010 and as an outdoor patient upto 05.05.2011. Every time, she required the services of attendant for coming to the hospital and had to spend on transportation for coming to PGIMS, Rohtak from her village Rohat, Distt. Sonepat. She had suffered 100% permanent disability. A Board of Doctors had examined her on 30.06.2010 and issued certificate to this effect Ex.P1/2. Again, she was examined by the Board of Doctors on 09.01.2011 and her disability was found as 100% vide certificate Ex.P103. The tribunal, while awarding the compensation under the non-pecuniary heads has allowed compensation of ₹5,000/- towards pain and suffering, ₹3,900/- towards transportation and ₹1 lakh towards permanent disability. No compensation was allowed towards attendant charges and special diet. The compensation awarded under the head of transportation charges is also quite meagre, as the claimant, who had suffered 100% disability, was being brought to hospital by using some means of private transport.

Learned counsel for respondent-insurance company has not disputed the grant of compensation under the above-mentioned non-pecuniary heads.

Keeping in view the facts of the case and that after the accident on 01.03.2010, till her death in November, 2012, claimant Poonam required the services of attendant. Taking the expenses of attendant as ₹4,000/- per month, she is allowed compensation of ₹84,000/- on this score. Towards the transportation charges, the compensation awarded by the tribunal is enhanced from ₹3900/- to ₹15,000/- and for special diet, she is awarded a compensation of ₹20,000/-.

As a sequel of my above discussion, the compensation awarded to claimant Poonam (since deceased through her LR Sameer) is enhanced from ₹1,40,500/- to ₹2,55,600/-.

FAO-4892-2012

Learned counsel for the appellant has argued that deceased was aged 50 years. She was taking care of her husband, children and family. The tribunal while assessing her income, has taken the value of her services rendered to the family as ₹2000/- per month, which is on lower side and also made deduction of 1/4th from her income which is not permissible. The tribunal has taken her age as more than 60 years and applied the multiplier of 7, while for the age group of 56 to 60 years, the multiplier applicable is 9. Even if, she has crossed the age of 60 years but not completed the age of 61 years, the multiplier of 9 is applicable in this case. The tribunal has awarded compensation of ₹10,000/- towards loss of consortium, ₹5000/- towards funeral expenses and ₹5000/- towards transportation expenses, which are required to be enhanced as per the observations of Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009.***

Learned counsel for respondent-insurance company has argued that income of the deceased, by taking value of her services has rightly been assessed as ₹2000/- per month by the tribunal. He has, however, not opposed grant of compensation under conventional heads as per law laid down in ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).***

The tribunal has taken the deceased as a housewife. A Co-ordinate Bench of this Court in case of ***United India Insurance Company Limited vs. Sube Singh and others FAO No.218 of 2014 (decided on 15.01.2014)*** has observed that "*To take a house wife as a skilled labourer alone does not do complete justice to her multifarious role as a Home Manger*". It was also observed that "*a house wife is something more than mere a skilled worker" and "it would not be unreasonable to estimate her contribution in that case at a higher figure than a skilled worker*". Agreeing with the observation of Co-ordinate Bench in the above cited case, this Court in case of ***Manphool and others Vs. Anil and others*** bearing ***FAO No.1274 of 2014 decided on 14.03.2018***, has taken value of contribution of housewife towards her family equivalent to highly skilled worker and assessed her notional income keeping in view the minimum wages prescribed for highly skilled worker by the State. Labour Commissioner, Haryana has assessed the wages of highly skilled worker w.e.f. 01.01.2010 as ₹4864. Applying the same principle, the value of the services rendered by the deceased cannot be assessed as less than ₹4900/-(rounded off) per month.

I also agree with learned counsel for the appellants that from the notional income assessed for the services rendered by housewife, no deduction could be made towards her personal expenses. As per the law settled by Hon'ble Apex Court in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121,*** for the age group of 56 to 60 years, the multiplier applicable is of 9. The accident had taken place in the year 2010, as such, the claimants are awarded a lump sum compensation of ₹60,000/- under the conventional heads i.e. loss of consortium, loss of estate and funeral expenses.

As a sequel of my above discussion, the compensation to which appellants-claimants in FAO-4892-2012 are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Value of services rendered by deceased to claimants.	₹4900 per month
(ii)	Compensation after multiplier of 9 is applied	(₹4900X12X9)= ₹529200
(iii)	Compensation under conventional heads i.e. loss of consortium, loss of estate and funeral expenses.	₹60000
Total		₹5,89,200/-

<u>FAO-3840-2012</u>

Learned counsel for the appellant has argued that appellant-claimant was one year of age at the time of accident. He had suffered serious, grievous injuries and the total bills of his treatment produced on record were of ₹2,92,076/-. The tribunal has not allowed the conveyance bill of Ambulance in which claimant was taken in the injured condition from his native place to Delhi for the reason that author of the bill or the person, who had actually taken the injured to the hospital, was not examined. This was no reason to decline the bill. In para 35 of the award, the tribunal had allowed the amount of bills of medical treatment and transportation charges as compensation under the pecuniary and non-pecuniary heads like (i) medication; (ii) special diet, (iii) transportation charges; (iv) attendant charges etc. and then awarded compensation of ₹5000/- towards pain and suffering and total amount of compensation of ₹3,00,000/- was awarded, which is highly inadequate keeping in view the injuries suffered by the appellant-claimant.

Learned counsel for the respondent-insurance company has argued that appellant was young boy of one year at the time of accident. The tribunal has taken note of this fact while awarding compensation and the compensation awarded to the appellant is quite appropriate and adequate.

It is proved on record that after the accident on 01.03.2010, the claimant remained admitted in Sir Ganga Ram Hospital, Delhi upto 23.03.2010. Here this fact is to be kept in mind that claimant is resident of village rohat, Tehsil Kharkhoda, District Sonepat. During his admission in Sir Ganga Ram Hospital, Delhi, he continuously required services of an attendant either from the family or a paid attendant.

Dr. Sanjeev Kumar, who treated him, had deposed that the claimant remained admitted in their hospital for 20 days. He was having head trauma with multiple fractures. At the time of his discharge from the hospital, he had not fully cured and his parents had taken him to some other hospital. PW2 Rattan Singh, Pharmacist at Ayurveda Central Institute, New Delhi has proved OPD Card (Ex.P26) of appellant Sameer.

The tribunal while discarding the bill of Ambulance for taking appellant Sameer from Rohtak to Delhi on 03.03.2010, has observed that this bill has not been duly proved. The evidence on record shows that the claimant was treated at Sir Ganga Ram Hospital, Delhi. As per his father, who appeared as PW7, claimant had suffered fracture injuries. Transportation/ambulance was required to carry the patient to the hospital. As such, there is no reason to discard this bill. As per the tribunal, medical bills produced on record are of ₹2,92,076/-. The tribunal allowed compensation of ₹2,95,000/- for medical charges, special diet, transportation, attendant charges, which are not only in adequate but the approach of the tribunal on this score is not sustainable in the eyes of law. Firstly, the claimant is entitled to amount of bills produced on record i.e. ₹2,92,076/- rounded off ₹2,92,100/-. Keeping in view the fact that claimant was child of one year and as per the injuries, he required continuous services of an attendant at least for six months, a compensation of ₹25,000/- is awarded towards attendant charges. Towards special diet, claimant is also awarded a compensation of ₹10,000/- and the amount of compensation awarded by the tribunal towards pain and suffering is enhanced from ₹5,000/- to ₹25,000/-. Towards transportation expenses, he is awarded a lump sum compensation of ₹20,000/- including the bill ₹11,000/- of Ambulance charges placed on file.

As a sequel of my above discussion, the compensation to which appellant-claimant Sameer is entitled, is re-assessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Pain and sufferings	₹25000
(ii)	Special diet	₹10000
(iii)	Attendant services	₹25000
(iv)	Medical expenses including transportation charges	₹292100
(v)	Transportation expenses	₹20000
Total		₹3,72,100

In view of discussion above, all the three appeals have merits and are allowed. The amount of compensation awarded to appellant-claimant Poonam (since deceased through her LR Sameer) in FAO No.3839-2012 is enhanced from ₹1,40,500/- to ₹2,55,600/-; to appellants Hari Ram and others in appeal bearing No.FAO-4892-2012 is enhanced from ₹1,80,000/- to ₹5,89,200/-; and to appellant-claimant Sameer in appeal bearing FAO No.3840-2012 is enhanced from ₹3,00,000/- to ₹3,72,100. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. In FAO-4892-2012, the enhanced amount of compensation shall be apportioned between appellants-claimants as follows:-

(i)	Appellants-claimants No.1 to 4	: 20% each
(ii)	Appellants-claimants No.5 and 6	: 10% each.

Respondent-insurance company will deposit the shares of appellants-claimants, who are major, in their bank accounts or pay the same through demand drafts. The share of minor appellants, if any, will be deposited in some nationalised bank as fixed deposits till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

(SURINDER GUPTA)
JUDGE

May 01, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***
Whether Reportable: ***Yes/No***