

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

Date of decision: 07.02.2018

FAO-4858-2012 (O&M)

Jasmel Kaur and another

... Appellants

Versus

Sukhraj Singh and others

... Respondents

FAO-4201-2012 (O&M)

United India Insurance Company Ltd.

... Appellant

Versus

Jasmel Kaur and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. D.P. Gupta, Advocate
for the insurance company.

None for the claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.4201 and 4858 of 2012 as these have emerged out of the same award dated 17.04.2012 passed by the Motor Accidents Claims Tribunal, Bathinda.

FAO No.4201 of 2012 has been filed by the United India Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.4858 of 2012 has been filed by Jasmel Kaur and another,

claimants in the case.

Counsel for the insurance company has fairly informed that appeal has been preferred to assail quantum of compensation.

The Tribunal has assessed compensation to the tune of Rs.30,35,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.42,752/-
2. After deducting income tax @ 20%, annual income	Rs.4,10,419/-
3. Multiplier	11
4. Deduction for personal expenses	1/3 rd
5. Loss of dependency	Rs.30,09,743/-
6. Expenses on funeral	Rs.5000/-
7. Loss of love and affection	Rs.15,000/-
8. Loss of consortium	Rs.5000/-

Counsel representing the insurance company has submitted that the deceased was an employee of National Fertilizers Limited, Bathinda. He was 54 years old at the time of occurrence and was due to retire on superannuation after six years at the age of 60 years, therefore, multiplier of 11 applied by the Tribunal on salary drawn by the deceased at the time of occurrence is liable to be modified by applying split multiplier. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Puttamma and others vs K.L. Narayana Reddy and another, 2014(1) R.C.R. (Civil) 443.**

Another submission made by counsel is that widow of the deceased is drawing pension of approximately Rs.29,000/-, the same is

liable to be deducted out of compensation payable to the claimants.

There is no representation on behalf of the claimants who were earlier being represented by a counsel.

Harjit Singh (deceased) was an employee of National Fertilizers Limited, Bathinda. As per salary certificate Ex.C1, his total salary was Rs.42,752/- and the annual salary comes to Rs.5,13,024/-. After deducting income tax of Rs.60,048/-, annual income is Rs.4,52,976/-. Deduction for personal expenses allowed by the Tribunal is affirmed. Claimants shall be entitled to increase in income for future prospects @ 15%.

The question for consideration is whether in the circumstances that the deceased was to retire after six years, split multiplier is to be applied.

Hon'ble the Supreme Court in **Puttamma's case** (supra), set aside the judgment of the High Court adopting a split multiplier method and further held that in absence of specific reasons and evidence on record, the Tribunal or the Court should not apply split multiplier in routine course and should apply multiplier as per decision of this Court in the case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77, Sarla devi and others vs Divisional Manager. In M/s Royal Sundaram Alliance Insurance Company Limited and another, 2014 ACJ (SC) 2391**, Hon'ble the Supreme Court set aside the split multiplier adopted by the High Court. In the said case, deceased was 58 years at the

time of accident and the Tribunal had applied multiplier of 8 but the High Court allowed loss of dependency at Rs.10,98000 for the first two years and for the balance 7 years, only 50% annual income was taken into consideration to compute loss of dependency at Rs.19,21,500/-. In **K.R. Madhusudhan and others vs Administrative Officer and another, 2011 (2) RCR (Civil) 207 (SC)**, the High Court reduced the compensation granted by the Tribunal. The split multiplier adopted by the High Court was set aside with the observations that the High Court introduced the concept of split multiplier and debarred from the multiplier used by the Tribunal without disclosing any reason.

A Coordinate Bench of this Court in **The Oriental Insurance Company vs Smt. Premwati and another, FAO No.6396 of 2012 decided on 27.02.2016** did not accept the judgment of another Co-ordinate Bench **Balbir Kaur vs Manjinder Singh and others, FAO No.5250 of 2013 decided on 11.12.2014** wherein split multiplier was allowed. The judgment in **Smt. Premwati and another's case** (supra) was challenged by way of petition for special leave to appeal before Hon'ble the Supreme Court but the special leave petition was dismissed on 26.08.2016 and findings of this Court negating plea of the insurance company to apply split multiplier have been affirmed. In the face of various judgments by Hon'ble the Supreme Court and counsel for the insurance company having failed to cite any judgment holding otherwise, it is difficult to accept contention of the insurance company that the Tribunal has erred while adopting multiplier of

11 admissible for age bracket of 51 to 55 years in **Smt. Sarla Verma's case** (supra). In this view of the matter, contention raised by counsel for the insurance company to apply split multiplier is not tenable and accordingly rejected.

The plea raised by the insurance company that family pension paid to widow of the deceased is liable to be deducted out of compensation assessed under the Motor Vehicles Act, 1988 (in short 'the Act') is misconceived and liable to be repelled in view of the settled position in law that pensionary benefits available to family of the deceased are not amenable to deduction out of compensation paid under the Act. In view of the above, loss of dependency comes to Rs.38,20,097/- (Rs.4,52,976 x 11) + (15% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified by holding that claimants shall be entitled to a sum of Rs.70,000/- in the light of judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.38,90,097/- and the additional amount is Rs.8,55,097/- (38,90,097 - 30,35,000), payable with interest @ 7.5% per annum from the date of petition till realization to widow of the

deceased.

For the foregoing reasons, the appeal filed by the insurance company fails and is accordingly dismissed. However, the appeal preferred by the claimants is partly allowed in the aforesaid terms.

No order as to costs.

07.02.2018
ashok

(REKHA MITTAL)
JUDGE

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