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

(1) FAO-10047-2014(O&M)

Shri Ram General Insurance Company Ltd.

...Appellant

Versus

Smt.Anita and others

...Respondents

(2) FAO-1867-2015(O&M)

Smt.Anita and others

...Appellants

Versus

Umesh Kumar and others

...Respondents

Date of Decision:-17.12.2018

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Rajbir Singh, Advocate
for the appellant in FAO-10047-2014 and
for respondent No.3 in FAO-1867-2015.

Mr.Sanjay Verma, Advocate
for appellants No.1 to 4 in FAO-1867-2015 and
for respondents No.1 to 4 in FAO-10047-2014.

Ms.Rubi Patil, Advocate for
Mr.Chanderhas Yadav, Advocate
for the respondents No.5 and 6 in FAO-10047-2014 and
for respondents No.1 and 2 in FAO-1867-2015.

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**H.S. MADAAN, J.**

By this order, I shall dispose of two FAOs i.e. FAO-10047-2014 filed on behalf of appellant – Shri Ram General Insurance Company

Limited and FAO-1867-2015 filed on behalf of appellants - Anita and others, which have arisen out of the same accident.

Briefly stated, facts of the case as pleaded by the claimants are that Sonu son of Thati Ram, aged 20 years had perished in a road side accident, which took place on 25.7.2012 when Sonu along with his mother Smt.Anita was going on a motorcycle having registration No.HR-26-Z-2658 towards village Mehchana, while in the area of near bus stand, Pataudi, a canter bearing registration No.UP-12-L-2643 (hereinafter referred to as the offending vehicle) suddenly came to a standstill, with the result motorcycle driven by Sonu dashed against it. Sonu and Anita suffered injuries. Sonu succumbed to the injuries suffered by him in the accident, whereas Anita had fortunately survived. An FIR regarding the accident was registered against Umesh Kumar, driver of the offending vehicle.

Smt.Anita aged about 40 years – mother, Sh.Thati Ram aged about 42 years – father, Samim – minor brother and Rajni – minor sister of deceased Sonu had brought a claim petition under Section 166 of the Motor Vehicles Act against Umesh Kumar – driver, Ms.Kiran Sharma – owner and Shri Ram General Insurance Company Pvt. Ltd., Gurgaon – insurer of the offending vehicle.

Smt.Anita had also filed a separate claim petition under Section 166 of the Motor Vehicles Act against those very respondents on account of the injuries suffered by her in the mishap.

After contest, the claim petition filed by Smt.Anita and others on account of death of Sonu was allowed by Motor Accidents Claims

Tribunal, Gurgaon vide award dated 18.3.2014 and compensation of Rs.9,64,270/- was awarded to the petitioners with interest @ 7.5% per annum from the date of filing of the claim petition till realization. All the respondents were jointly and severally held liable to pay the amount.

As regards the claim petition filed by Smt.Anita on account of injuries suffered by her in the accident, she was awarded Rs.25,000/- as compensation with interest @ 7.5% per annum from the date of filing of the claim petition till realization.

The claimants and insurance company were dissatisfied with the said award and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The first contention raised by the insurance company in the appeal filed by it is with regard to the earning of the deceased. As per the case of the claimants in the claim petition, the deceased was working as a labourer; he was aged 20 years at the time of his death and was earning Rs.7,000/- per month; the entire family comprising his parents, minor brother and minor sister were dependent upon him; that the amount of Rs.1.5 lacs was spent on his treatment before he expired. The Tribunal had wrongly assessed his income as Rs.5,500/- per month adding 50% towards future prospects, taking it as Rs.8,250/- per month. However, the insurance company submits that income of deceased should have been taken as Rs.5,000/- per month only being a daily wager since as per notification issued by Government of Haryana dated 16.9.2012 at the relevant time monthly wages of an unskilled labourer were Rs.4,967.29 and minimum wages of semi-skilled (A) were Rs.5,097.29 and semi-skilled (B) were Rs.5,227.29 only.

After hearing the rival contentions, I find that accident in this case had taken place on 25.7.2012. As per own case of the claimants, the deceased was aged about 20 years, earning about Rs.7,000/- per month. No documentary evidence in that regard has been brought on file by the claimants. The Tribunal was justified in coming to the conclusion that income of a labourer at the relevant time was not more than Rs.5,500/- per month. Though minimum wages of workers in terms of the notification issued by the State Government from time to time provide an indication for calculation of probable income of a person similarly placed but that minimum wages fixed cannot be taken as final word on the subject. The Tribunal is also to take into view the wages actually paid to a manual labourer at that time. It has to be considered that a manual labourer cannot work throughout the month and thus required rest for a few days. He may not be able to work throughout the month on account of illness or some urgent work etc. Therefore, the Tribunal was justified in taking monthly income of the deceased as Rs.5,500/- per month. Since the deceased was a bachelor, the Tribunal rightly deducted 50% of his income on account of personal expenses further noting down that if he had been alive he would have got married within next 3-4 years and raised his own family. The Tribunal in view of the judgment delivered by the Apex Court in ***Rajesh and others Versus Rajbir Singh and others, 2013(3) RCR(Civil) 170*** by three Judges Bench of the Apex Court, wherein it was observed that where the deceased was self-employed or was a person with fixed wages, future prospects should be taken into consideration; if the deceased was below 40 years, then there should be addition of 50% to the actual income of the deceased. In view of the ratio of the authority, the income of the deceased was taken to be Rs.8,250/- (5,500+2,750). However, the Tribunal fell in error in doing so since the Constitutional Bench of Hon'ble Supreme Court in authority ***National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009*** has provided the guidelines in that regard observing that in case the deceased was self-employed or was on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years and if he was between the age of 40 to 50 years then addition of 25% and where the deceased was in the age group of 50 to 60 years, then the addition should be to the extent of 10%. As such taking the future prospects @ 40%, those come out to 5,500+2,200=7700. Personal expenses of the deceased, annual dependency of the claimants is come out to Rs.46,200/-. In view of the guidelines laid down in the authority ***Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR(Civil) 77***, a multiplier of 18 is to be used. Total compensation comes out to 3850 x 12 x 18 = 8,31,600/-.

Coming to compensation under conventional heads, the claimants have been awarded Rs.25,000/- on account of last rites. As per authority National Insurance Company Limited (supra), it has observed that funeral expenses should be Rs.15,000/- and loss of estate Rs.15,000/-.

Since the deceased was unmarried, no compensation towards loss of consortium is to be granted. The total amount payable comes out to Rs.8,31,600 + 30,000 = 8,61,600, adding medical expenses Rs.48,270, those come out to be Rs.9,09,870/-. The amount awarded by the Tribunal is Rs.9,64,270/-

Thus ***FAO-10047-2014*** filed by the Insurance Company succeeds partly and a compensation of Rs.9,09,870/- is ordered to be paid in place of Rs. 9,64,270/-.

Whereas FAO-1867-2015 filed by the claimants Smt.Anita and others for enhancement of compensation is not found to have any merit.

Learned counsel for the claimants has contended that no compensation was awarded by the Tribunal on account of loss of love and affection and compensation be awarded to the appellants in that regard. In support of his such contention, he has referred to authority ***Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and Ors. 2018(4) RCR(Civil) 333*** by the Apex Court.

However, learned counsel for the appellant Insurance Company has argued that compensation was awarded under Article 142 of the Constitution of India, whereas this Court cannot award such compensation invoking that power in that way and the Constitutional Bench in ***National Insurance Company Limited Versus Pranay Sethi and Ors.***(supra) has not awarded any compensation under that head.

I find force in the contentions raised by learned counsel for the Insurance Company. Under the circumstances, the claimants are not entitled to get any compensation on account of loss of love and affection due to death of Sonu. The claimants have not led any evidence to show that a sum of Rs.1.5 lacs has been spent on medical treatment of Sonu before he died in the road side accident. In light of detailed discussion supra the ***FAO-1867-2015*** filed by the claimants/appellants does not seem to have any merit and therefore the same stands dismissed.

17.12.2018 **(H.S.MADAAN)**
Brij **JUDGE**

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

**Whether reportable : Yes/No**