IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) FAO No.10138 of 2014 (O&M)
Decided on:-April 18, 2018.

The New India Assurance Company Limited.

.........Appellant.

Versus

Smt. Kavita and others

.........Respondents.

(2) FAO No.10139 of 2014 (O&M)

The New India Assurance Company Limited.

.........Appellant.

Versus

Smt. Poonam and others

.........Respondents.

__CORAM__: ***HON'BLE MR. JUSTICE HARI PAL VERMA.***

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Present:- Mr. R.C. Gupta, Advocate
for the appellant-insurance company.

Mr. V.S. Punia, Advocate
for the respondents-driver and owner.

__HARI PAL VERMA, J. (Oral)__

This order shall dispose of the aforementioned two appeals as the same have arisen out of the one and the same incident as well as common award dated 01.10.2014 passed by learned Motor Accidents Claims Tribunal, Jind (hereinafter referred to as the Tribunal), whereby in two claim petitions titled as ***Kavita and others Versus Ram Niwas and others*** and ***Poonam and***

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others Versus Ram Niwas and others filed under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act), the Tribunal awarded total compensation of Rs.16,08,000/- to the claimants in each petition on account of death of Ramesh and Suresh in a motor vehicular accident, which took place on 12.11.2013.

However, for convenience and clarity, the detailed order is being passed in ***FAO No.10138 of 2014*** titled as ***The New India Assurance Company Limited Versus Smt. Kavita and others***.

Briefly stated, on 12.11.2013, deceased Ramesh and Suresh had proceeded from their village Dharoli Khera to Jind in order to bring the articles of tyre puncture and Atta Chakki on a motorcycle bearing registration No.HR-20H-4354. The motorcycle was being driven by Suresh at a moderate speed, whereas Ramesh was sitting as a pillion rider. When they reached near village Khatkar, the offending car i.e. Maruti Swift Dezire bearing registration No.HR-21E-1220 being driven by respondent Ram Niwas at a very high speed and in a rash and negligent manner came from Narwana side and hit the motorcycle by coming on the wrong side of the road. As a result thereof, Ramesh and Suresh succumbed to the injuries at the spot. A case bearing FIR No.314 dated 12.11.2013 under Sections 279, 304-A and 427 IPC was registered against respondent Ram Niwas.

Accordingly, the claim petition No.138 of 2013 titled as ***Smt. Kavita and others Versus Ram Niwas and others*** was filed on account of death of Ramesh by the claimants, who are the wife, minor children and

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parents of deceased Ramesh. Similarly, another claim petition No.139 of 2013 titled as ***Smt. Poonam and others Versus Ram Niwas and others*** was filed on account of death of Suresh by the claimants, who are the wife, minor children and parents of deceased Suresh.

Vide impugned award dated 01.10.2014, the Tribunal has awarded compensation of Rs.16,08,000/- along with interest @ 9% per annum till its realisation in each of the claim petition.

The appellant-insurance company has filed two separate appeals impugning the respective awards passed by the Tribunal.

Learned counsel for the appellant-insurance company has argued that the awarded amount is on higher side and runs contrary to the law laid down by Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and others 2017(4) RCR (Civil) 1009***. He has further argued that, in fact, there was no eye-witness of the incident and the case is an implanted one.

I have heard learned counsel for the parties.

So far as the argument raised by learned counsel for the appellant-insurance company that the case is implanted one is concerned, the same deserves outright rejection for the reason that it is after the availability of enough material on record, the Tribunal has passed the impugned award. However, there is merit in the argument of learned counsel for the appellant that the awarded amount runs contrary to the judgment passed by Hon'ble Supreme Court in ***Pranay Sethi and others' case (supra)***.

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In the case in hand, deceased Ramesh was 26 years of age and as held in ***Pranay Sethi and others' case (supra)***, an addition of 40% is required to be granted to the claimants towards future prospects, whereas the Tribunal has awarded an addition of 50% on this count. Similarly, as against the conventional heads, the Tribunal has awarded Rs.1,50,000/- i.e. Rs.1,00,000/- on account of loss of consortium and love and affection, Rs.25,000/- on account of loss of care and guidance and Rs.25,000/- on account of funeral expenses. But in the light of the judgment passed by the Apex Court in ***Pranay Sethi and others' case (supra)***, a total sum of Rs.70,000/- is admissible to the claimants under conventional heads. However, there is no dispute regarding applicability of multiplier of '18'.

Therefore, this Court finds that the impugned award passed by the Tribunal needs modification and the amount of compensation awarded by the Tribunal is re-assessed in the following tabulated form:

Monthly income of deceased.		Rs.6,000/-
Future Prospects	(40% of 6000)	Rs.2,400/-
Total monthly income	(6000+2400)	Rs.8,400/-
Annual income.	(8400 x 12)	Rs.1,00,800/-
Deduction towards personal expenses of deceased.	(1/4 of annual income)	Rs.25,200/-
Annual dependency of the claimants.	(100800 – 25200)	Rs.75,600/-
Multiplier.	(as per age of the deceased)	'18'
Total loss of dependency.	(75600 x 18)	Rs.13,60,800/-

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Conventional heads.	Loss of estate	Rs.15,000/-
	Funeral expenses	Rs.15,000/-
	Loss of consortium	Rs.40,000/-
Total amount of compensation.	(1360800+15000+15000 + 40000)	Rs.14,30,800/-
Amount already awarded by the Tribunal.		Rs.16,08,000/-
Reduction.	(1608000 – 1430800)	Rs.1,77,200/-

Therefore, the respondent-claimants are entitled to total compensation of Rs.14,30,800/- instead of Rs.16,08,000/-, as awarded by the Tribunal. The aforesaid reduction is also applicable in the connected appeal i.e. ***FAO No.10139 of 2014*** as on the same pattern, as similar amount of compensation has been awarded by the Tribunal in that case by considering the same income of deceased and application of deduction/multiplier thereof.

So far as the plea of learned counsel for the appellant-insurance company that the rate of interest @ 9% per annum awarded by the Tribunal is on higher side is concerned, the same cannot be accepted in view of the latest judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.2217 of 2018 arising out of SLP (C) No.7739 of 2017*** titled as ***Jagdish Versus Mohan and others*** decided on 06.03.2018, wherein the Apex Court has awarded interest @ 9% per annum.

Vide order dated January 15, 2015, this Court had stayed disbursement of amount of compensation beyond 70% of the amount of compensation as awarded by the Tribunal. Therefore, the Tribunal shall release the remaining amount of compensation in accordance with the modified amount of compensation, as indicated above.

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With the aforesaid modification, both the appeals stand disposed of.

Since the main appeals have been disposed of, pending civil miscellaneous application, if any, also stands disposed of.

Photocopy of this order be placed on the file of other connected case.

(HARI PAL VERMA)
JUDGE

April 18, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No

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