IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 10244 of 2014 (O&M)
Date of decision : July 06, 2018

1. Rajinder Kumar and others .....Appellants

Versus

Madan Lal and others ....Respondents

FAO No. 5713 of 2015 (O&M)

2. Jagdish Ram and others .....Appellants

Versus

Madan Lal and others ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Ashwani Arora, Advocate
for the appellants.

Mr. Punit Jain, Advocate
for respondent No. 3 - insurance company.

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LISA GILL, J.

This order shall dispose of FAO No. 10244 of 2014 (Rajinder Kumar and others Versus Madan Lal and others) and FAO No. 5713 of 2015 (Jagdish Ram and others Versus Madan Lal and others).

It is the death of Vinod Kumar and Dharampal in the same motor vehicle accident which took place on 01.12.2013 that led to filing of two claim petitions by their respective legal heirs. Both the said claim petitions were decided on 28.05.2014 vide two separate awards passed by the learned Motor Accident Claims Tribunal, (FTC), Rupnagar (hereinafter referred to as the 'Tribunal'). Therefore, both the appeals seeking enhancement of compensation awarded to the claimants are taken up together and are being decided by a common order.

The appellants-claimants Rajinder Kumar and others seek enhancement of compensation awarded to them on account of death of Vinod Kumar. The claimants in FAO No. 10244 of 2014 are the parents, widow and four minor children of the deceased Vinod Kumar.

The appellants-claimants Jagdish Ram and others seeking enhancement of compensation awarded to them on account of death of Dharampal vide award dated 28.05.2014. The claimants in FAO No. 5713 of 2015 are the parents, widow and five minor children of the deceased - Dharampal.

There is no dispute that both Dharampal and Vinod Kumar lost their life in a motor vehicle accident, which took place on 01.12.2013 caused due to rash and negligent driving of the offending bus bearing No. HP-12-D-4141 driven by the respondent – Madan Lal. FIR No. 251 dated 01.12.2013 was registered.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 01.12.2013 due to rash and negligent driving of bus bearing No. HP-12-D-4141 driven by the respondent – Madan Lal. This finding of the learned Tribunal has attained finality. The question for consideration in these appeals is whether the claimants are entitled to enhancement of compensation. There is no dispute regarding the liability of the insurance company in this case.

FAO-10244-2014

The facts, which are the subject matter of FAO-10244-2014 (Rajinder Kumar and others) are adverted to first. The deceased – Vinod Kumar was 36 years old at the time of accident according to the post mortem report (Ex. P2). Income of the deceased was assessed as ₹6,000/-

per month. Deduction of 1/5th was effected, keeping in view the number of dependants. Multiplier of 15 was applied. Lumpsum amount of ₹30,000/- for transportation, last rites of the deceased and ₹30,000/- was awarded for loss of consortium, love and affection. Learned Tribunal on consideration of facts and evidence on record awarded a sum of ₹9,24,000/-.

Learned counsel for the appellants submits that income of the deceased – Vinod Kumar has been wrongly assessed as ₹6000/- i.e. the wages earned by a labourer especially keeping in view the evidence on record to show that Vinod Kumar was running a denting and painting work shop alongwith agricultural and dairy farming work. Reference is made to the testimony of PW5 Ram Lal, Sub Post Master, Kiratpur Sahib, who has proved the entries in the copy of ledger Ex. PW5/A, to show that the deceased used to invest ₹2,000/- per month from 24.11.2010 till 25.06.2013 and his account was closed after his death. It is further argued that in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, compensation on account of loss of future prospects at the rate of 40% are required to be awarded. It is further prayed that compensation under the conventional heads should also be enhanced.

Learned counsel for insurance company, however, submits that there is not an iota of evidence on record to show that the deceased was running a denting and painting shop in the name of M/s Rajesh Painter at village Massewal. Not much relevance, it is contended, can be placed on statements of PW3 and PW4, who stated that they were employed as helpers by the deceased for a sum of ₹ 7,000/- per month each, in the absence of any documentary evidence to this effect. There is nothing on record to show that the deceased was the owner of any agricultural land or had taken the same on lease besides doing dairy farming. Therefore, the income has been correctly assessed and the compensation has been rightly awarded to the claimants.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not in dispute that the deceased Vinod Kumar was 36 years old at the time of his death. PW3 and PW4 have stated that they were employed as helpers by the deceased Vinod Kumar for a sum of ₹7,000/- each. However, there is no evidence to corroborate the said statements. At the same time, evidence of PW5 Ram Lal, Sub Post Master, Kiratpur Sahib cannot be ignored. It is proved on record that the deceased used to invest ₹2,000/- since November, 2010. PW5 specifically stated that the said account was closed after the death of Vinod Kumar. PW5 stated that Vinod Kumar used to deposit a sum of ₹2,000/- per month and if he failed to deposit the amount in a particular month, he would deposit two instalments in the next month. Last instalment deposited by Vinod Kumar on 25.06.2013 of ₹10,000/-, was in lieu of ₹2,000/- which was to be deposited each month. Therefore, income of the deceased with which he was undoubtedly supporting a family of seven persons has wrongly been assessed as ₹6,000/- per month. Keeping in view the facts, circumstances and evidence on record, it is considered appropriate to assess the income of the deceased as ₹10,000/- per month instead of ₹6,000/- per month.

As per the guidelines laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), future prospects at the rate of 40% are required to be awarded in view of the age of the deceased (36 years) thereby taking the income of the deceased to ₹14,000/- per month. Deduction of 1/5th is to be applied as number of dependants is seven (7), thereby rendering income of the deceased to be ₹11,200/-(14,000-2800). Multiplier of 15 is correctly applied. Annual dependancy of the claimants is assessed as ₹20,16,000/- (₹11200x12x15). The claimants are also entitled to ₹40,000/- on account of loss of consortium, ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate, as well as funeral expenses etc. Claimants are, thus, entitled to compensation of ₹20,86,000/- detailed as under:-

Loss of dependency (₹11200x12x15)	₹20,16,000/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	**₹20,86,000/-**

FAO No. 5713 of 2015 (O&M)

Learned Tribunal on consideration of facts and evidence on record awarded a sum of ₹9,24,000/-. Income of the deceased Dharampal was assessed as ₹6,000/- per month. Deduction of 1/5th was effected, keeping in view the number of dependants. Multiplier of 15 was applied. Lumpsum amount of ₹30,000/- for transportation, last rites of the deceased and ₹30,000/- was awarded for loss of consortium, love and affection.

Learned counsel for the appellants submits that income of the deceased – Dharampal has been wrongly assessed as ₹6000/- as the deceased was running a general store at village Massewal apart from doing agricultural work and dairy farming, thus, earning ₹25,000/- per month. Age of the deceased, it is submitted, was less than 40 as held by the learned

Tribunal. It is further argued that in terms of judgment of the Hon'ble Supreme Court in **Pranay Sethi's** case (supra), compensation on account of loss of future prospects at the rate of 40% are required to be awarded. It is, thus, prayed that compensation under the conventional heads should also be enhanced.

Learned counsel for insurance company, however, submits that there is no evidence on record to show that the deceased was running a general store, doing agricultural work and dairy farming. Therefore, the income has been correctly assessed as ₹6,000/- per month and compensation rightly awarded to the claimants.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

As per the Post Mortem Report (Ex.P2), age of the deceased is reflected to be 40 years old at the time of the accident on 01.12.2013. There is nothing on record to indicate that his age was lesser than forty as urged by the learned counsel for the appellants. In the absence of any evidence to indicate the age of the deceased being less than forty at the time of accident, there is no justification for awarding future prospects at the rate of 40%. Similarly, there is no evidence on record to justify any increase in the income of the deceased from ₹6,000/- per month as assessed by the learned Tribunal.

In view of the guidelines laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi's** case (supra), future prospects at the rate of 25% are afforded, which takes the income of the deceased to ₹7,500/- per month. Deduction of $1/5^{th}$ is to be applied as number of dependants is nine (9), thereby rendering income of the deceased to be ₹6,000/-(7,500-

1500). Multiplier of 15 is correctly applied by the learned Tribunal. Dependancy of the claimants is assessed as ₹10,80,000/- (₹6000x12x15). The claimants are also entitled to ₹40,000/- on account of loss of consortium, ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate as well as funeral expenses etc. Claimants are, thus, entitled to compensation of ₹11,50,000/- detailed as under:-

Loss of dependency (₹6000x12x15)	₹10,80,000/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹11,50,000/-

Needless to say, the amount of compensation already awarded to the appellants in both the appeals shall stand deducted from the amount calculated as above. Appellants shall be entitled to interest at the rate of 7.5% per cent per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants in both the appeals shall be in the same ratio as fixed by the learned Tribunal. Directions of the Tribunal in respect to manner of disbursement of compensation amount to the claimants shall enure.

With the abovesaid modification in the amount of compensation, both FAO No. 10244 of 2014 and FAO No. 5713 of 2015 are disposed of.

(Lisa Gill)
Judge

July 06, 2018
rts

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