IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 10498 of 2014(O&M)

Date of Decision: July 26 , 2018.

Shakuntla Devi and others ...... APPELLANT(s)

Versus

Shankar and another ...... RESPONDENT (s)

2. FAO No. 8416 of 2015(O&M).

Shankar and another ...... APPELLANT(s)

Versus

Shakuntla Devi and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sushil Bhardwaj, Advocate
for the appellants in FAO No.10498 of 2014
for the respondents in FAO No.8416 of 2015.

Mr. Jitender Nara, Advocate
for the respondents in FAO No.10498 of 2014 and
for the appellants in FAO No.8416 of 2015.

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LISA GILL, J.

This order shall dispose of FAO No. 10498 of 2014 (Shakuntla Devi and others v. Shankar and another) and FAO No.8416 of 2015 (Shankar and another v. Shakuntla Devi and others) as both of them arise out of the common impugned award dated 10.10.2014.

FAO No.10498 of 2014 has been filed the claimants seeking enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Bhiwani (for short, the 'Tribunal') vide impugned award dated 10.10.2014 on account of death of Vijay Kumar in a motor vehicle accident.

FAO No.8416 of 2015 has been filed by the driver and owner of the offending vehicle for setting aside the abovesaid award in favour of the claimants. The said appeal was tagged alongwith FAO No.10498 of 2014. There is a delay of 309 days in filing of FAO No.8416 of 2015. Notice of the application for condonation of delay as well as the main appeal is accepted by learned counsel for the claimants. For the reasons in the application and arguments addressed as well as the fact of pendency of the connected appeal, delay of 309 days in filing of this appeal is condoned.

With the consent of learned counsel for the parties, both the appeals are taken up together for hearing.

Brief facts necessary for adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act (for short, the 'Act') seeking compensation on account of the death of Vijay Kumar, who lost his life in a motor vehicle accident which took place on 11.03.2013 due to the rash and negligent driving of the offending bus bearing registration No. HR-61-9381 by respondent No.1 – Shankar. FIR No.75 dated 11.03.2013 under Sections 279/304A IPC was registered against the driver of the bus. There is no challenge to the finding of the learned Tribunal in this respect and the same has attained finality.

The learned Tribunal awarded a sum of ₹9,07,122/- as compensation to the claimants i.e., parents and wife of the deceased-Vijay Kumar vide impugned award dated 10.10.2014. While holding the deceased to be a skilled labourer, his income was assessed to be ₹6,160/- per month. Deduction of 1/3rd on account of personal expenses was applied keeping in view the number of dependants i.e., three as per decision of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil) 77***. The deceased was admittedly 24 years of age at the time of the accident therefore, multiplier of 18 was applied. Nothing was awarded under the conventional heads.

Learned counsel for the claimants/appellants while not assailing the income of the deceased as assessed as well as the multiplier of 18 and deduction at the rate of 1/3rd effected by the learned Tribunal, submits that no amount has been awarded to the claimants on account of loss of future prospects in view of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. It is further submitted that nothing has been awarded on account of loss of consortium and an inadequate amount has been awarded towards loss of estate and funeral expenses. It is thus prayed that the amount of compensation awarded to the claimants/appellants be enhanced.

Sole contention raised by learned counsel for the appellants (driver and owner of the offending vehicle) in FAO No.8416 of 2015 is that the claimants had produced fraudulent documents before the learned Tribunal to try and prove that the deceased was earning a sum of ₹16,000/- per month as an employee of APG Needles Private Limited. The learned Tribunal has concluded that the said documents i.e. Ex.P4 and Ex.P5, relating to the salary for the months of February and March, 2013 cannot be relied upon as no authenticity is attached to them. This is so as Ex.P4 and Ex.P5 are purportedly signed by the deceased, whereas he admittedly passed away in a motor vehicle accident on 11.03.2013. However, the factum of Vijay (deceased) loosing his life in the motor vehicle accident on 11.03.2013 due to the rash and negligent driving of the offending bus bearing registration No. HR-61-9381 by respondent No.1 – Shankar is not disputed. It is further submitted that in any case the impugned award does not call for further enhancement of the compensation as same is reasonable and justified in the facts and circumstances of the case.

I have heard learned counsel for the parties and have gone through the file of this case.

Liability of the respondents – driver and owner of the offending bus is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 in FAO No.10498 of 2014. The learned Tribunal has rightly assessed the income of the deceased to be ₹6,160/- per month while holding him to be a skilled labourer. There is no evidence on record to prove the deceased to be earning a higher income.

At the same time, I do not find any ground to dismiss the petition filed by the claimants merely on the allegation that fraudulent documents were placed before the Tribunal. The learned Tribunal has rightly declined to assess the income of the deceased on the basis of the salary certificates (Ex.P4 and P5) as authenticity of the said documents was not proved. However, there is nothing on record to reflect that the deceased was not an employee working as CNC Operator with APG Needles Private Limited. Certificate (Ex.P6) was issued by the said Concern and PW4 Jai Bhagwan their employee was duly authorized to exhibit records of the company. Doubt created on the salary certificate issued by this Concern by itself, in the absence of any positive evidence by the owner/driver, cannot be of any further benefit to the said owner and driver. In the factual matrix of the case, petition filed by the claimants is not liable to be dismissed in toto on the ground of fraud. Income of the deceased has rightly been assessed while holding him to be a skilled labourer in these circumstances. Multiplier of 18 as well as deduction of 1/3rd on account of personal expenses have also been correctly applied keeping in view the decision of the Hon'ble Supreme Court in Sarla Verma case (supra). However, increase in the income of the deceased at the rate of 40% on account of future prospects has to be afforded and amount under the conventional heads is to be awarded as well, keeping in view the observations of the Hon'ble Supreme Court in **Pranay Sethi's case** (supra). Appellants-claimants are, thus, entitled to amount of compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	6160 p.m. i.e. ₹73,920/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	73,920 + (73,920 **x** 40%) = 1,03,488
3.	Income after deduction of 1/3rd on account of personal expenses	1,03,488 – (1,03,488 **x** 1/3) = 68,992
4.	Total dependancy after applying a multiplier of 18	(68,992 **x** 18) = 12,41,856
5.	Loss of estate	15,000
6.	Loss of consortium to wife	40,000
7.	Funeral expenses	15,000
	Grand Total	₹13,11,856/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the claimants as determined b7y the learned Tribunal shall remain the same.

With the abovesaid modification in the amount of compensation, FAO No.10498 of 2014 is disposed of. FAO No.8416 of 2015 is dismissed.

(LISA GILL)
JUDGE

July 26 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No