IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 10612 of 2014 (O&M)
Date of Decision : 20.04.2018

Sunita Rani and others ....Appellants

Versus

Bunty Singh and others .....Respondents

2. XOBJC-101-CII-2016 in/and
FAO No. 2472 of 2015 (O&M)

National Insurance Company Ltd. ....Appellant

Versus

Smt. Jasbir Kaur and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Cooner, Advocate
for the appellants in FAO-10612-2014 and
for cross-objectors in FAO-2472-2015.

Mr. S.S. Sihdu, Advocate
for the appellant-Insurance Company in FAO-2472-2015 and
for respondent no. 3 in FAO-10612-2014.

Surinder Gupta, J.

Both the above captioned appeals are taken up together as these arise out of the same accident.

2. Claimants have filed appeal **(FAO No. 10612 of 2014)** seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Amritsar (later referred to as 'the Tribunal') for death of **Surjit Kumar** (later referred to as 'the deceased'), in a motor vehicle accident on 19.04.2013 with truck bearing registration no. PB-02-BF-9921 (later referred to as 'the offending vehicle').

3. National Insurance Company Ltd. has filed the appeal **(FAO-2472-2015)** challenging the award passed by the Tribunal allowing compensation of **₹35,60,752/-** to respondents no. 1 to 6 for death of **Avtar**

Singh in the same accident in which also respondents no. 1 to 6 (claimants) have filed the cross-objections seeking enhancement of compensation as awarded by the Tribunal.

4. As the only issue involved in these appeals is quantum of compensation, detailed facts of the case are being skipped for the sake of brevity.

FAO-10612-2014

5. Learned counsel for appellants while seeking enhancement of compensation has argued that claimants as per law settled by Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4) RCR (Civil) 1009*** are entitled to compensation of ₹70,000/- under the conventional heads, which has not been allowed by the Tribunal.

6. Learned counsel for respondent no. 3-Insurance Company has not disputed the grant of compensation as per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***.

7. The deceased in this case was 45 years of age and was doing private business. As per law settled in ***Pranay Sethi's case (supra)***, claimants are entitled to 25% addition in income of the deceased towards future prospects. However, the Tribunal has allowed 30% addition on this score. The Tribunal has awarded compensation of ₹6000/- towards funeral expenses, ₹8000/- towards loss of estate and ₹8000/- towards loss of consortium, which as per observations of Hon'ble Apex Court in above referred case are to be enhanced to ₹15,000/- for funeral expenses, ₹15,000/- for loss of estate and ₹40,000/- for loss of consortium. By applying norms as settled in above referred case, compensation to which claimants are entitled, works out to be as follows:-

(i)	Monthly income of the deceased as assessed by the Tribunal	₹5260 per month
(ii)	25% of (i) above added towards future prospects	(₹5260+ ₹1315)= ₹6575 per month
(iii)	1/4th of (ii) above deducted towards personal expenses	(₹6575- ₹1644) = ₹4931 per month
(iv)	Compensation calculated after applying the multiplier of 14 in view of age of the deceased	(₹4931X12X14) = ₹828408
(v)	Compensation towards loss of consortium	₹40000
(vi)	Compensation towards loss of estate	₹15000
(vii)	Compensation towards funeral expenses	₹15000
	Total	**₹898408 (rounded off to ₹898400)**

FAO-2472-2015

8. Learned counsel for the appellant-Insurance Company has argued that the Tribunal has placed reliance on income tax return of the deceased, which was filed much after the death of deceased, as such, the same is not admissible in evidence. The deceased was member of Bahadur Hussain Cooperative Labour and Construction Society, which was having annual income of ₹6505/- and ₹4509/- respectively. The society was having 16 members, as such, share of deceased in income of the society was quite meagre. As per income tax return, the deceased was having ₹60,000/- rental income, which is not effected and claimants continue to get it, as such, the same is to be deducted from gross income of the deceased. If income tax return (Ex. P-6), which was filed on 11.11.2013, is discarded, there is no other evidence about income of the deceased and the same is to be assessed as per prevailing minimum wages.

9. Learned counsel for respondents no. 1 to 6/cross objectors has argued that the Tribunal while computing amount of compensation has awarded compensation of ₹22,000/- under the conventional heads, which is

to be enhanced to ₹70,000/- as per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***. He has, however, conceded that claimants are entitled to 25% addition in income of the deceased towards future prospects, while the Tribunal has allowed 30% addition on this score.

10. The Tribunal while taking note of the evidence on record regarding income of the deceased has rightly ignored agricultural income of ₹3 lakhs as shown in income tax return as there was no evidence that he was owning any agricultural land. While calculating income of deceased on the basis of income tax return (Ex. P-6), the Tribunal has observed in para 14 of the award as follows:-

> *"14. ....As per income tax return Ex. P6, annual income of Avtar Singh, deceased for the year 2012-2013 at the time of his death is assessed as ₹5,04,950/-, out of which ₹3,25,000/- is shown as his agricultural income. However, during the course of arguments, the learned counsel for the petitioners has fairly conceded that the petitioners are not in possession of any evidence to prove the fact if Avtar Singh, deceased was an agriculturist, drawing annual income of ₹3,25,000/- at the time of his death. So, the income of Avtar Singh, deceased at the time of his death is assessed as ₹2,79,953/- per annum as per income tax return Ex. P6."*

11. The deceased was 50 years of age and as per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, claimants are entitled to 25% addition in income of the deceased towards future prospects while the Tribunal has awarded 30% addition on this score. Claimants are also entitled to compensation of ₹70,000/- under the conventional heads for loss of consortium, loss of estate and funeral expenses instead of ₹22,000/- as awarded by the Tribunal.

12. The deceased was income tax assessee and was having PAN number. Admittedly, income tax return (Ex. P-6) was filed seven months after the accident and in this return annual income of the deceased has been shown as ₹5,04,950/-. There was column no. 51 of the return, which is reproduced as follows:-

51	In a case where regular books of account of business or profession are not maintained, furnish the following information for previous year 2006-07 in respect of business of profession					
	a	Gross receipts	0	c	Expenses	74,700
	B	Gross profit	2,84,550	d	Net profit	2,09,850

13. The entry in above column shows that even in the previous year, the deceased was having net profit of ₹2,09,850/-. Though, learned counsel for the appellant has raised argument that ₹60,000/- income of the deceased was rental income but he could not point out any column in the return wherein any rental income of the deceased has been mentioned. While computing the total income, profits and gains from business have been shown as ₹2,69,850/- and income from other sources has been mentioned as ₹10,103/- thereby making total income of the deceased as ₹2,79,953/-. The Tribunal has thus rightly taken income of the deceased as mentioned in income tax return (Ex. P-6). As per observations of Hon'ble Apex Court in case of ***Pranay Sethi (supra)***, claimants are entitled to compensation of ₹40,000/- towards loss of consortium, ₹15,000/- towards loss of estate and ₹15,000/- towards funeral expenses instead of ₹22,000/- allowed by the Tribunal on this score.

14. I find no reason to agree with submission of learned counsel for the appellant that income tax return for the financial year 2011-2012 placed on record by claimants to show income of the deceased should be discarded on the mere fact that it was filed after death of the deceased. The entry in this

return shows that the deceased was filing returns even earlier. Income of the deceased as taken by the Tribunal on the basis of income tax return (Ex. P-6) is approved and compensation to which claimants are entitled is reassessed as follows:-

(i)	Age of the deceased	50 years
(ii)	Annual income of the deceased as assessed by the Tribunal	₹279953 per annum
(iii)	25% of (ii) above added towards future prospects	(₹279953+ ₹69988)= ₹349941 per annum
(iv)	1/4th of (iii) above deducted towards personal expenses	(₹349941- ₹87485) = ₹262456 per annum
(v)	Compensation calculated for loss of dependency after applying the multiplier of 13	(₹262456X13) = ₹3411928
(vi)	Compensation towards loss of consortium	₹40000
(vii)	Compensation towards loss of estate	₹15000
(viii)	Compensation towards funeral expenses	₹15000
Total		**₹3481928**

15. As a sequel of my discussion above, the appeal **(FAO-10612-2014)** has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Surjit Kumar** is enhanced from **₹8,83,588/-** to **₹8,98,400/-**. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of instant appeal till actual realization. Respondent no. 3-Insurance Company being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. Claimants will share the enhanced amount of compensation as per award.

16. The appeal (FAO No. 2472 of 2016) filed by insurer of the offending vehicle i.e. National Insurance Company Ltd. is also allowed. Award of the Tribunal is modified and the compensation allowed to

claimants for death of **Avtar Singh** is reduced from **₹35,60,752/-** to **₹34,81,928/-** while the **cross objections (XOBJC-101-CII-2016)** filed by Jasbir Kaur and others (claimants-respondents no. 1 to 6) has no merit and the same are dismissed.

17. In the event of demise of any of the claimants before or after disbursement of amount of compensation, his/her share shall be paid to surviving claimants.

April 20, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*