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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **FAO-1171-2015 (O&M)**
Date of decision: 16.01.2018

TATA AIG General Insurance Company Ltd. ... Appellant

Versus

Dharamvir and Ors. ... Respondents

II. **FAO-1320-2015 (O&M)**

TATA AIG General Insurance Company Ltd. ... Appellant

Versus

Dharamvir and Ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Rajesh K. Sharma, Advocate, for the appellant.

Mr. Ashwani Arora, Advocate, for respondents No.1 to 3.

None for respondents No.4 and 5.

HARI PAL VERMA, J. *(Oral)*

This order shall dispose of two appeals i.e. FAO No.1171 of 2015 titled as ***'TATA AIG General Insurance Company Ltd vs. Dharamvir and Ors'*** and FAO No. 1320 of 2015 titled as ***'TATA AIG General Insurance Company Ltd vs. Dharamvir and Ors'*** as both the appeals have been filed against the common award dated 29.10.2014 passed by learned Motor Accident Claims Tribunal, Chandigarh (for short, 'the Tribunal'). However, for the sake of brevity, facts are being taken from FAO No.1171 of 2015.

In FAO No. 1171 of 2015 (*MACT case No.1400 of 28.11.2013*), the Insurance Company has challenged the award of compensation of ₹8,89,000/- to the respondent-claimants on the death of Sham Lal @ Shamu Kumar in a motor vehicular accident. In FAO No. 1320 of 2015 *(MACT case No.1315 of 13.09.2013*), the insurance company has challenged the award of compensation of ₹5,65,000/- to the respondent-claimants on the death of Bachni Devi @ Asha Rani.

Briefly stated, on the intervening night of 16/17.07.2013, Bachni Devi @ Asha Rani (since deceased) along with her son Sham Lal @ Shamu Kumar and other occupants were going from Gita Bhawan, Yamuna Nagar to Shankar Nagar, Jagadhari, Yamuna Nagar in a car being driven by Lavnish. When they reached at Madhu Chowk, Yamuna Nagar and were in the process of crossing the said chowk, a truck (Trolla) bearing registration No.HR-58-A-3641 being driven in a rash and negligent manner, came from the side of Jagadhari and took a sudden turn towards Kanhaiya Chowk without giving any indicator. The truck struck against their car. As a result of the accident, Bachni Devi and others including Sham Lal suffered injuries and were taken to Civil Hospital, Yamuna Nagar where Bachni Devi, Neelam and one Rakesh were declared brought dead. Sham Lal @ Shamu Kumar was referred to Gaba Hospital, Yamuna Nagar, where he succumbed to his injuries. Regarding this accident, FIR No. 374 dated 17.07.2013 under Sections 279, 337, 427 and 304A IPC was registered at Police Station Yamuna Nagar City, District Yamuna Nagar, against the driver of the Truck.

Before the Tribunal, two claim petitions were filed, one qua the death of Bachni Devi @ Asha Rani bearing MACT case No.1315 of 13.09.2013 titled as '***Dharamvir and others vs. Narinder Singh and others'*** and other qua the death of Sham Lal @ Shamu Kumar bearing MACT case No.1400 of 28.11.2013 titled as '***Dharamvir and others vs. Narinder Singh and others'***. The claimants were the son & daughters of Bachni Devi @ Asha Rani who were respectively the brother & sisters of Sham Lal @ Shamu Kumar.

In FAO No. 1171 of 2015, the Tribunal assessed the age of the deceased Sham Lal @ Shamu Kumar, at the time of accident as 34 years. Since claimants failed to lead any cogent and convincing evidence to prove the income of the deceased, the Tribunal assessed the income of deceased as ₹6000/- per month, as that of a causal labourer. The Tribunal also added 50% of the amount towards the future prospects. The annual income was assessed as ₹1,08,000/- (6000+50%=9000x12). Since the deceased was a bachelor, the Tribunal deducted 50% of amount towards the personal expenses of the deceased and thus annual dependency was worked out at ₹54,000/- (1,08,000-50%). Keeping in view the age of deceased, the Tribunal applied multiplier of 16 and thus the loss of dependency came to ₹8,64,000/- (54000x16). A sum of ₹25,000/- was also granted towards funeral expenses. Thus total compensation of ₹8,89,000/- was granted to the claimants.

In FAO No. 1320 of 2015, the Tribunal assessed the monthly contribution of the deceased Bachni Devi @ Asha Rani towards providing help in the house hold work and management of the family at ₹5,000/- per month and considering her age as 60 years applied multiplier of 9, awarded compensation towards loss of dependency at ₹5,40,000/- (5000x12x9). A sum of ₹25,000/- was also granted towards funeral expenses. Thus total compensation of ₹5,65,000/- was granted to the claimants.

Aggrieved against the aforesaid award, the Insurance Company has filed the present appeals.

Learned counsel for the appellant-Insurance Company has argued that in view of law laid down by Hon'ble Apex Court in ***National Insurance Company Limited Versus Pranay Sethi and Others*** ***-2017(4) RCR (Civil) 1009***, the award dated 29.10.2014 passed by the Tribunal is required to be revisited and the amount under the head of future prospects has to be calculated on the basis of 40% instead of 50% as awarded by the Tribunal. Similarly, the funeral expenses of ₹25,000/- awarded in the both cases are required to be reduced to ₹15,000/-. He has further argued that the driver of the offending vehicle was not holding a valid driving licence as the driving licence so produced by the owner/driver does not match with the driving licence produced on record. He has also argued that the Tribunal has erred in not deducting the amount towards the personal expenses of deceased Bachni Devi @ Asha Rani from the assessed notional income.

On the other hand, learned counsel for the respondents-claimants has argued that the compensation awarded by the Tribunal is just and appropriate and requires no modification.

I have heard learned counsel for the parties.

This Court has been able to look into this aspect and find that the driving licence so produced on record belongs to Narendra Singh son of Gurmej Singh and the real name of the driver is Narinder Singh son of Gurmail Singh. Minor mistake of spelling cannot be the ground to disbelieve the driving licence, particularly when the Insurance Company has not adduced any evidence from the licensing authority to prove its case that the driver was not holding a valid driving licence.

So far as deduction of amount towards the personal and living expenses of deceased Bachni Devi @ Asha Rani from the notional income is concerned, no deductions were required to be made, in view of laid down in the judgments i.e. ***Royal Sundaram Alliance Insurance Company Limited Versus Manmeet Singh and others-2012 ACJ (Delhi) 721*** and ***Paramjit Singh and another Versus Dilbagh Singh alias Bagga and others-2013(4) PLR 328 (P&H)*** wherein it has been held that the income of a housewife is assessed as monthly value of her services and not her monthly income and, therefore, the concept of deduction cannot be applied to such assessment.

The argument qua future prospects and funeral expenses, raised by learned counsel appearing on behalf of Insurance Company carries weight. In view of the law laid down in ***Pranay Sethi's case*** (supra), the future prospects have to be assessed @ 40% and not 50%.

Similarly the funeral expenses are required to be modified to ₹15,000/- instead of ₹25,000/- in the both cases.

Accordingly, the award passed by the Tribunal is modified and the compensation granted to the respondent-claimants in both cases is re-assessed in the following manner:-

FAO No. 1171 of 2015

Monthly Income	:	₹6,000/- per month
Amount on account future prospects (40%).	:	₹2,400/- per month
Total	:	₹8400/- per month
Annual Income	:	8400x12= ₹1,00,800/-
Annual dependency (50%)	:	$\frac{100800 \times 50}{100}$ = ₹50,400/-
Total loss of dependency	:	50400x16= ₹8,06,400/-
Funeral expenses	:	₹15,000/-
Total	:	**₹8,21,400/-**

FAO No. 1320 of 2015

Monthly contribution	:	₹5,000/- per month
Annual contribution	:	5000x12= ₹60,000/-
Total loss of dependency	:	6000x9= ₹5,40,000/-
Funeral expenses	:	₹15,000/-
Total	:	**₹5,55,000/-**

With the aforesaid modification in the award, present appeals stand disposed of.

(HARI PAL VERMA)
JUDGE

16.01.2018

SANJEEV Whether speaking/reasoned : Yes/No.

Whether Reportable : Yes/No.