IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 30.05.2018

FAO 3526 of 2013 (O&M)

Kailash Chand and another ....*Appellants*

Versus

Dilbag Singh and others ....*Respondents*

FAO No. 1302 of 2015 (O&M)

Deepa Jain ....*Appellant*

Versus

Dilbag Singh and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. S K Yadav, Advocate
for the appellants (FAO No. 3526 of 2013)
for respondent Nos. 4 and 5 (FAO NO. 1302 of 2015)

Mr. J P Sharma Advocate and
Mr. Abhishek Maradha, Advocate
for the appellant (FAO No. 1302 of 2015)

Ms. Gurjit Kaur Sandhu, Advocate
for respondents No. 1 & 2 (FAO No. 3526 of 2013)

Mr. Nikhil Chopra, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 11.04.2013 passed by the Motor Accidents Claims Tribunal, Narnaul (in short, 'the Tribunal').

The Tribunal has assessed compensation of Rs.9,15,872.00, detailed hereunder:-

Monthly income of the deceased	Rs.7,000.00
Deduction for personal expenses	1/3rd
Multiplier	16
Loss of dependency	Rs.8,95,872.00
Loss of consortium	Rs.10,000.00
Funeral expenses	Rs.10,000.00

Counsel for the appellants in FAO No. 3526 of 2013 would argue that the Tribunal has assessed income of the deceased at Rs.7,000.00 per month and the same is grossly inadequate. To substantiate his plea for enhancement of income, it is argued that claimants examined Anil Kaushik, Chairman, Eureka Public School, Behror Road, Narnaul (PW6) to prove that Rupesh Kumar was working as P.G.T. Physics in that school at salary of Rs.11,050.00 per month and remained working with that School from 02.11.2010 till March 31, 2012. It is argued with vehemence that in view of educational qualification of Rupesh Kumar, who was B.Sc/B.Ed coupled with the emoluments paid to him by the said school, income of the deceased may be assessed accordingly. In addition, it is argued that as deceased was B.Sc./B.Ed., he was earning from tuition to the students. Claimants are entitled to increase in income for future prospects and adequate compensation under conventional heads. As the deceased was 30 years 03 months old, appropriate multiplier should be 17.

Counsel representing parents of the deceased would argue that the Tribunal has apportioned compensation by making unequal distribution . The Tribunal has allowed 70% of compensation to Smt. Deepa Jain, widow of Rupesh Kumar who has performed second marriage immediately after filing of claim application. It is argued that application for compensation was filed by widow and old parents of the deceased who lost their only son at young age of 30 years. Compensation allowed by the Tribunal and additional compensation, if any, awarded by this Court, may be apportioned amongst the claimants in equal ratio.

Counsel representing appellant Deepa Jain in FAO No. 1302 of 2015 has echoed the arguments advanced by counsel representing claimants in FAO 3526 of 2013 so far as enhancement of compensation is concerned but he has supported the award allowing 70% compensation to Deepa Jain who became widow at a young age of 23/24 years. Another submission made by counsel is that as Deepa Jain became widow at very young age, she could not afford to lead rest of her life as a widow. Under the compelling circumstances, Deepa Jain and her parents decided to re-settle her in matrimony but loss caused due to death of Rupesh can never be compensated with any amount of money.

Counsel representing the insurance company has supported assessment made by the Tribunal on the premise that as deceased was not working with Eureka Public School after 31.03.2012 and the accident took place on 05.07.2012, the claimants cannot be allowed compensation on the basis of income drawn by Rupesh Kumar from the said school.

Be that as it may, it is undisputed position of the case that Rupesh Kumar was B.Sc/B.Ed. He remained working with Eureka Public School for a period of approximately one and a half year as P.G.T. Physics at salary of Rs.11,050.00 per month. He left the job since 01.04.2012 and was not in employment on 05.07.2012. Taking into consideration avocation and salary of deceased prior to the accident coupled with his educational qualification, interest of justice would be served if income of the deceased is assessed at Rs.10,000.00 per month. The claimants shall be entitled to addition in income for future prospects at the rate of 40%.

Counsel for the insurance company has not disputed that as per date of birth recorded in documents with regard to educational qualification of the deceased, he was 30 years 03 months old at the time of death. Under the circumstances, admissible multiplier would be 17 in place of 16. Deduction for personal expenses allowed by the Tribunal is affirmed. In view of the above, loss of dependency is calculated at Rs.19,04,000.00 (Rs.20,40,000.00 *i.e.* Rs.10,000 x 12 x 17 + Rs.8,16,000.00 (40% future prospects) - Rs.9,52,000.00 (1/3rd deduction).

Under conventional heads, claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation comes to Rs.19,74,000.00 (19,04,000.00 + Rs.70,000.00) and additional amount is Rs.10,58,128.00 (19,74,000.00 – 9,15,872.00), payable with interest at the rate of 7.5% per annum from the date of petition till realization.

This brings the Court to question of apportionment of compensation assessed by the Tribunal and additional amount allowed by this Court. The application for compensation has been filed by the widow and parents of the deceased. There is nothing on record suggestive of the fact that father of the deceased was dependent upon income of the deceased. As such, only widow and mother of the deceased would be entitled to get compensation qua loss of dependency. As has been rightly argued by

Counsel representing widow of the deceased, loss of Rupesh Kumar rendering Deepa widow at a young age of 23/24 years would be a shock for rest of her life. The mere fact that she has performed second marriage in order to have companionship, she cannot be denied adequate compensation. In this view of the matter, in my considered opinion, interest of justice would be served, if compensation as assessed by the Tribunal and additional amount allowed by this Court is shared by the widow and mother of the deceased in the ratio 50:50. The apportionment made by the Tribunal is modified accordingly.

For the foregoing reasons, the appeals are allowed in the aforesaid terms.

(Rekha Mittal)
Judge

30.05.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No