IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.4719 of 2013 (O&M)
Dated of Decision:30.10.2018

The New India Assurance Co. Ltd.
...... Appellant

Versus

Kamaljeet Kaur and others
…..Respondents

2. FAO No.5249 of 2013 (O&M)

Kamaljeet Kaur and others
...... Appellants

Versus

Kulwinder Singh and others
…..Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sukhdarshan Singh, Advocate for the appellant in FAO No.4719 of 2013 and for respondent No.3 in FAO No.5249 of 2013.

Mr. J.S. Khattar, Advocate for
Mr. Deepak Sharma, Advocate for respondents No.1 to 4 in FAO No.4719 of 2013 and for the appellants in FAO No.5249 of 2013.

*****

LISA GILL, J.

This order shall dispose of FAO No.4719 of 2013 and FAO No.5249 of 2013 as both appeals arise out of common award dated 15.01.2013.

FAO No.4719 of 2013 has been preferred by the Insurance Company challenging the impugned award dated 15.01.2013/28.05.2013 passed by learned Motor Accident Claims Tribunal, Ambala (for short, the 'Tribunal').

FAO No.5249 of 2013 has been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide impugned award on account of death of Yashpinder Singh in a motor vehicle accident on 06.10.2011.

The claimants, who are the wife, children and mother of the deceased, filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Yashpinder Singh due to injuries received in a motor vehicle accident which took place on 06.10.2011. FIR No.57 dated 06.10.2011 was registered under Sections 279 and 304-A IPC at Police Station Naggal against respondent No.1. It was pleaded that the deceased at the time of his death was working as ALM in the UHBVN, earning Rs.25,000/- per month. He was 42 years old at the time of accident. Compensation was thus prayed for.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the offending vehicle by its driver. Learned Tribunal further held that there was no loss of income caused to the claimants/dependents as claimant No.1-widow of the deceased would receive full salary of the deceased till the date of his retirement. In view of the judgment of Hon'ble Supreme Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another, *2009(3) RCR (Civil) 77,* 30% of the salary of the deceased was added as future prospects and income assessed as Rs.7200/-. Yashpinder Singh was 42 years old at that time, therefore, multiplier of 14 was applied. Thus, an amount of compensation of Rs.1,00,800/- was awarded. In addition thereto, the claimants were held entitled to Rs.5000/- each towards loss of estate and loss of love and affection besides a sum of Rs.10,000/- towards funeral expenses. Another sum of Rs.10,000/- was awarded for loss of consortium. Thus, total compensation of Rs.1,30,800/- was awarded to the claimants along with interest at the rate of 7.5.% from the date of filing of the claim petition till its realization.

Thereafter, an application for correction/rectification of the award dated 15.01.2013 was moved by the claimants on the plea that while the learned Tribunal had accepted the salary of the deceased to be Rs.24,000/- per month, 30% increment of the same comes to Rs.7200/- per month but annual income of the deceased was not computed and multiplier was applied to the monthly income. Learned Tribunal while taking note of the error, corrected the award. Necessary rectification was carried out vide order dated 28.05.2013. It was clarified that the claimants shall be entitled to Rs.12,09,600/- on this count instead of Rs.1,00,000/- as mentioned in award dated 15.01.2013.

Learned counsel for the Insurance Company vehemently argues that once the award had been passed by the learned Tribunal on 15.01.2013 and the award was satisfied as well, on 08.02.2013 by the Insurance Company, an application for rectification of the award was wrongly allowed on 28.05.2013. It is submitted that order dated 28.05.2013 passed by learned Tribunal be set aside on this count alone and the compensation recalculated on this count be set aside. No other argument apart from the abovesaid has been raised on behalf of the Insurance Company.

Learned counsel for the claimants while refuting the aforesaid arguments submits that it is merely an arithmetical error which was corrected by the learned Tribunal and the appeal filed by the Insurance Company should be dismissed. Moreover, the learned Tribunal has grossly erred in awarding meagre compensation under the conventional heads. Learned counsel for the Insurance Company, however, does not deny that the claimant/widow under the policy of the State of Haryana would be entitled to receive the entire salary of the deceased husband till the date of his retirement. Learned counsel does not raise any claim qua loss of income as assessed by the learned Tribunal. It is prayed that compensation under the conventional heads be enhanced.

Heard learned counsel for the parties.

A perusal of the file reveals that the learned Tribunal has merely corrected an arithmetical error, vide order dated 28.05.2013. As per the award dated 15.01.2013, salary of the deceased has been correctly assessed to be Rs.24,000/- per month on the basis of statement of PW1 Manish Kumar, Establishment Clerk. It was further noted that the widow would continue to receive the salary till the retirement of the deceased husband. Future prospects at the rate of 30% would be Rs.7200/- as the deceased was 42 years old at the time of the accident. Multiplier of 14 was applied and the amount of compensation was mentioned to be Rs.1,08,000/-. However, the income of the deceased was multiplied by 14 without calculating the income of the deceased on an annual basis. The said correction was carried out vide order dated 28.05.2013. It is apparent that the same is an arithmetical error and the Tribunal was well within its jurisdiction to have corrected the same. There is thus no merit in the sole argument raised by learned counsel for the Insurance Company.

As per the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others, in Civil Appeal No.9581 of 2018 decided on 18.09.2018, the claimants are entitled to a sum of Rs.15,000/- each on account of loss of funeral expenses and loss of estate instead of Rs.10,000/- and Rs.5000/- respectively. Claimant No.1/widow is entitled to a sum of Rs.40,000/- instead of Rs.10,000/- for loss of spousal consortium. Claimants No.2 and 3 are entitled to Rs.40,000/- each on account of loss of parental consortium and claimant No.4 is entitled to Rs.40,000/- on account of loss of filial consortium.

Appellants-claimants are, thus, entitled to compensation detailed as under:-

Sr.No.	*Heads of Claim*	
1.	Future prospects (30% of the income of Rs.24,000 per month)	7200 p.m. i.e., 86,400/- per annum 86,400 **x**14 =12,09,600/-
2.	Loss of estate	15,000/-
3.	Funeral expenses	15,000/-
4.	Loss of consortium to claimants No.1 to 4 @ Rs.40000/- each	1,60,000/-
	Grand Total	13,99,600/-

The amount of compensation already awarded to the claimants, needless to say, shall stand deducted from the amount calculated as above. Claimants shall be entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

Apportionment of amount of compensation amongst claimants 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 award dated 15.01.2013 as well as order dated 28.05.2013, FAO No.5249 of 2013 is disposed of. FAO No.4719 of 2013 filed by the Insurance Company is dismissed.

(LISA GILL)
JUDGE

October 30, 2018.
'ishwar'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No