IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 5055 of 2013 (O&M)
Date of Decision : 27.03.2018

National Insurance Company Ltd. ....Appellant

Versus

Savitri and others .....Respondents

2. FAO No. 1514 of 2014 (O&M)

Savitri and others ....Appellants

Versus

Anil Kumar and others .....Respondents

3. FAO No. 5551 of 2014 (O&M)

Indro and others ....Appellants

Versus

Anil Kumar and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Khanna, Advocate
for the appellant in FAO-5055-2013 and
for respondent no. 3 in FAO Nos. 1514 and 5551 of 2014.

Mr. Sandeep Verma, Advocate
for appellants in FAO Nos. 1514 and 5551 of 2014 and
for respondents no. 1 to 4 in FAO-5055-2013.

Mr. Aakash Chaudhary, Advocate
for Mr. Jarnail Singh Saneta, Advocate
for respondents no. 5 and 6 in FAO-5055-2013 and
for respondents 1 and 2 in FAO Nos. 1514 and 5551 of 2014.

Surinder Gupta, J.

Above captioned appeals have been taken up together as the same arise out of common award dated 12.04.2013 passed by Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal'). Two claim petitions were separately filed by legal heirs of Ajit Singh and Bhim Singh (later referred to as 'the deceased'). Facts of both the claim petitions have been discussed in para 2 of the award and the same are reproduced as follows:-

> *"2. The facts giving rise to both the claim petitions are that on 1.11.2010 Ajit Singh, since deceased along with Bhim Singh son of Surta Ram resident of village Risalwa started their journey from their village to Assandh on their motorcycle bearing registration no. HR-40B-4480 being driven by Ajit Singh at a slow and moderate speed and on his due left side of the road and at about 2.45 pm, when they reached near Ambika Rice Mill, Salwan Road, a Scorpio vehicle bearing registration no. UP-20L-2800 being driven in a rash and negligent manner came from Assandh side and hit the motorcycle being driven by Ajit Singh, as a result of which the accident in question took place. Due to the accident both the riders of the motorcycle fell down and sustained multiple, serious and grievous injuries. The said accident was witnesses by Dalip Singh son of Om Parkash, Jasbir Singh son of Dilbagh Singh and one Ram Mehar. The injured were taken to General Hospital, Assandh from where they were referred to General Hospital, Karnal. But Bhim Singh succumbed to the injuries on way to Genreal Hospital, Karnal whereas Ajit Singh died in the Hospital. It was, thus, alleged that the accident in question took place due to the rash and negligent driving of Scorpio vehicle bearing registration no. UP-20L-2800 being driven by respondent no. 1."*

2. The Tribunal awarded compensation for death of Ajit Singh, aged 22 years, who was a student of B.A. Ist Year, as follows:-

(i)	Monthly income of the deceased	₹4405
(ii)	30% of (i) above added towards future prospects.	₹4405+ ₹1321) = ₹5726 per month
(iii)	½ of (ii) above deducted towards personal expenses	₹5726- ₹2863) = ₹2863 per month
(iv)	Compensation calculated after applying the multiplier of 18	(₹2863X12X18) = ₹618408

(v)	Compensation for funeral expenses	₹2000
(vi)	Compensation for loss of love and affection	₹2000
Total		**₹622408**

3. In claim petition (MACT No. 43 of 2012), claimants were allowed compensation for death of Bhim Singh, aged 50 years as follows:-

(i)	Monthly income of the deceased	₹4405
(ii)	30% of (i) above added towards future prospects.	₹4405+ ₹1321) = ₹5726 per month
(iii)	1/4th of (ii) above deducted towards personal expenses	₹5726- ₹1431) = ₹4295 per month
(iv)	Compensation calculated after applying the multiplier of 13	(₹4295X12X13) = ₹670020
(v)	Compensation for funeral expenses	₹2000
(vi)	Compensation for loss of love and affection	₹2000
(vii)	Compensation for loss of consortium	₹5000
Total		**₹679020** (wrongly calculated as ₹677720)

FAO No. 1514 of 2014

4. Learned counsel for claimants-appellants has argued that deceased-Ajit Singh was a student of B.A. Ist Year. The Tribunal has taken his income, which was prescribed as minimum wages for unskilled worker. A person, who was doing graduation, cannot be compared with an unskilled or skilled worker. He had all the avenues open for him in life, as such, his income could be taken as minimum wages prescribed for a highly skilled worker by Labour Commissioner, Haryana. 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***, claimants are also entitled to 40% addition in income of the deceased towards future prospects besides enhancement of compensation towards funeral expenses and loss of estate.

5. Learned counsel for Insurance Company has argued that the deceased was not a working hand and was a student, as such the Tribunal has rightly taken his income as unskilled worker. As the deceased was a student and had no established income, addition in his income towards future prospects could not be allowed.

6. Firstly, I take the issue of income of the deceased, who was a student. In this case income of the deceased, who was a student of B.A. Ist Year, was assessed as ₹4405/- per month keeping in view the minimum wages prescribed for unskilled worker. I agree with learned counsel for claimants-appellants that a student of graduation cannot be equated with unskilled worker. If not highly skilled, he for all intents and purposes, is to be taken as skilled person, as such, his income could be taken as ₹5000/- per month keeping in view the fact that minimum wages for skilled worker w.e.f. 01.01.2011 prescribed by Labour Commissioner, Haryana was ₹5020/-. It appears that learned counsel for Insurance Company has addressed argument regarding the established income of the deceased under the impression that there should be some documentary evidence to establish that deceased was earning particular amount as income/salary per month. In India number of persons work in unorganized sectors and are involved in their personal vocations. If the submission of learned counsel for the Insurance Company is accepted, in that case, a number of victims in motor accident claim cases will not be in a position to get reasonable compensation. In the absence of any documentary evidence, the Tribunal assesses their income keeping view their status, profession and prevailing rate of minimum wages prescribed by the State etc. The same for all intents and purposes can be taken their established income and consequently, claimants are entitled to 40% addition in income of

the deceased towards future prospects. The accident had taken place in the year 2010. Keeping in view this fact, claimants are also allowed compensation of ₹10,000/- each towards loss of estate and funeral expenses.

7. In view of my above discussion, claimants are entitled to compensation for death of Ajit Singh in a motor vehicle accident, as follows:-

(i)	Monthly income of the deceased	₹5000 per month
(ii)	40% of (i) above added towards future prospects	(₹5000+ ₹2000)= ₹7000 per month
(iii)	½ of (ii) above deducted towards personal expenses	(₹7000- ₹3500) = ₹3500 per month
(iv)	Compensation calculated after applying the multiplier of 18	(₹3500X12X18) = ₹756000
(v)	Compensation towards loss of estate	₹10000
(vi)	Compensation towards funeral expenses	₹10000
	Total	**₹776000**

FAO Nos. 5055 of 2013 and 5551 of 2014

8. Learned counsel for appellants has argued that deceased-Bhim Singh was 40 years of age. The Tribunal on the basis of his age mentioned in the postmortem report has taken the same as 50 years. In the ration card, produced on file, age of the deceased is mentioned as 40 years. The Tribunal has wrongly observed that there is no evidence on record regarding income of the deceased, who was an agriculturist and was owning the land as per copy of *jamabandi* (Ex. P-14). The deceased was owner of the land situated in village Risalwa, *tehsil* Assandh, District Karnal. Being an agriculturist, he was managing his land and his status cannot be taken as that of a daily wager. He has further argued that claimants are also entitled to compensation under the conventional heads as awarded by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***.

9. Learned counsel for Insurance Company has argued that though

the deceased was alleged to be 40 years of age but the Tribunal has rightly taken his age as 50 years as recorded in the postmortem report. The Tribunal has allowed 30% addition in income of the deceased towards future prospects, which as per his age is to be reduced to 10%. If above parameters are applied, compensation already awarded to claimants is on higher side.

10. Firstly, I take issue of age of deceased-Bhim Singh. The Tribunal in para 20 of the award has taken note of statement of his wife, wherein she has stated that her husband was 40 years of age. However, while applying multiplier for calculating amount of dependency, the Tribunal mentioned age of the deceased as 50 years without even referring to his age as mentioned in the postmortem report. On perusal of postmortem report of deceased on file, I find that his age is mentioned therein as 50 years. This fact cannot be ignored that while recording age of the deceased in the postmortem report, no documentary evidence is taken by the doctor concerned and the same is recorded by approximation. Claimants have also placed on file copy of ration card issued in the year 2005, where age of the deceased is mentioned as 40 years. The accident had taken place on 01.11.2010 i.e. after a period of five years of issuance of this ration card, as such, age of the deceased can be very well taken as 45 years and the multiplier applicable in this case as per law settled by Hon'ble Apex Court in case of ***Sarla Verma (supra)*** is 14. Claimants are also entitled to 25% addition in income of the deceased towards future prospects. Keeping in view the fact that accident had taken place in the year 2010 they are also awarded compensation on account of loss of consortium as ₹30,000/-, loss of estate as ₹10,000/- and funeral expenses as ₹10,000/-.

11. The next question, which arsis for consideration is about income of the deceased. The Tribunal has taken his income as ₹4405/-, which was

prescribed as minimum wages for an unskilled worker at the relevant time. A person, who owns land does not work only as a labourer but also manages his land, crop cycle, irrigation, spray, fertilizer etc. He acts as a qualified manager while looking after his land and choosing the crop cycle. His income cannot be taken less than a highly skilled worker. In the year 2011, minimum wages for highly skilled workers were prescribed by Labour Commissioner as ₹5152.98 ps. Keeping in view the fact that accident had taken place in the year 2010, income of the deceased is assessed as ₹5100/- per month.

12. In view of my above discussion, claimants are entitled to compensation for death of Bhim Singh in a motor vehicle accident, as follows:-

(i)	Monthly income of the deceased	₹5100 per month
(ii)	25% of (i) above added towards future prospects	(₹5100+ ₹1275)= ₹6375 per month
(iii)	1/4th of (ii) above deducted towards personal expenses	{(₹6375- ₹1593.75 (rounded off as ₹1595)} = ₹4780 per month
(iv)	Compensation calculated after applying the multiplier of 14	(₹4780X12X14) = ₹803040
(v)	Compensation for loss of consortium	₹30000
(vi)	Compensation towards loss of estate	₹10000
(vii)	Compensation towards funeral expenses	₹10000
Total		**₹853040**

13. As a sequel of my discussion above, the appeal **(FAO-1514-2014)** filed by **claimants, Savitri and others**, has merit and the same is **accepted** while the appeal **(FAO-5055-2013)** filed by Insurance Company has no merit and is **dismissed**. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Ajit Singh** is enhanced from **₹6,22,408/-** to **₹7,76,000/-.** The appeal **(FAO-5551-2014)** filed by **claimants, Indro and others**, is also allowed and award of the Tribunal is modified to the extent that compensation allowed to claimants for death of **Bhim Singh** is enhanced from

₹6,79,020/- (wrongly calculated as ₹6,77,720/-) to **₹8,53,040/-** 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.

14. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimant(s).

March 27, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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