IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 5373 of 2013 (O&M)
Date of Decision : 22.11.2018

Tripta Devi and another ....Appellants

Versus

Rakesh Kumar @ Sonu and others .....Respondents

2. FAO No. 8285 of 2015 (O&M)

Parkash Chand and others ....Appellants

Versus

Rakesh Kumar and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Chanderkant Rana, Advocate
for the appellant in FAO-5373-2013 and
for respondents no. 4 and 5 in FAO-8285-2015.

Mr. Sunil Agnihotri, Advocate
for appellants in FAO-8285-2013 and
for respondents no. 4 to 7 in FAO-5373-2013.

Mr. Eklavya Darshi, Advocate
for respondent no. 3 in both the appeals.

Surinder Gupta, J.

Motor Accident Claims Tribunal, Hoshiarpur (later referred to as ‘the Tribunal’) vide award dated 29.08.2013 allowed compensation of ₹24,39,200/- for death of Suresh Kumar (later referred to as ‘the deceased’) in a motor vehicle accident with truck bearing registration no. PB-R-1285 (later referred to as ‘the offending vehicle’) and allowed apportionment of the same as follows:-

(i).	Wife-Tripti Devi	:	40%
(ii)	Daughter-Sudha Dogra	:	40%
(iii)	Father-Parkash Chand, mother-Kaushalya Devi, sister-Surishta Devi and brother-Balwinder Singh	:	5% each

2. Against the award two separate appeals have been filed. First (FAO-5373-2013) has been filed by Tripta Devi, wife and Sudha Dogra, minor daughter of the deceased and second (FAO-8285-2015) by parents, brother and sister of the deceased. In both the appeals, claimants have sought enhancement of compensation as awarded by the Tribunal.

3. Learned counsel for appellants in both the appeals have confined their submission for enhancement of compensation on following counts:-

(i) Income of the deceased was proved as ₹14,172/- per month while the Tribunal has taken the same as ₹12,600/- instead of taking the entire income of the deceased;

(ii) Under the conventional heads, the Tribunal has allowed compensation of ₹20,000/- only while claimants are entitled to compensation of ₹70,000/- 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***.

4. Learned counsel for Insurance Company has argued that the Tribunal while taking income of the deceased has taken his basic pay, grade pay and dearness allowance (DA). The allowances like house rent allowance (HRA), TPT, risk allowance and washing allowance were personal allowances of the deceased and those could not be taken as part of the salary, as such, the Tribunal has rightly taken income of the deceased and calculated amount of the compensation. Regarding the compensation under the conventional heads, he has not disputed the amount as allowed by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***.

5. The claimants have proved on file the salary certificate of the deceased for the month of March, 2011.The accident in this case had taken place on 21.03.2011 and salary certificate produced on record is the most relevant document to ascertain income of the deceased. The deceased was getting ₹14,172/- as total income under the heads as follows:-

Basic Pay	₹6920/-
Grade Pay	₹1800/-
DA (45%)	₹3924/-
HRA (10%)	₹872
TPT	₹580/-
Risk Allowance	₹60/-
Washing Allowance	₹16/-
Total	**₹14172/-**

6. HRA, risk allowance and TPT allowance cannot be excluded from the salary of the deceased. Only allowance which could be taken as personal allowance is washing allowance allowed to him @ ₹16/- per month. The deceased was posted as Majdoor in Field Ammunition Depot. The risk cover allowed to him cannot be termed as personal allowance and the same is case of HRA and TPT allowance. After deducting washing allowance of ₹16/- per month, income of the deceased works out to be ₹14156/- per month. The Tribunal has committed error while taking his monthly income as ₹12,600/-. Claimants as per law settled by Hon'ble Apex Court in case of ***Pranya Sethi (supra)*** are also entitled to compensation of ₹15000/- towards funeral expenses, ₹15000/- towards loss of estate and ₹40000/- towards loss of consortium to wife of the deceased.

7. In view of above, the amount of compensation to which claimants are entitled is reassessed as follows:-

(i)	Name of the deceased	Surseh Kumar
(ii)	Age of the deceased	31-32 years
(iii)	Income of the deceased	₹14156 per month

(iv)	50% of (iii) above added in income of the deceased	(₹14156+7078) = ₹21234 per month
(v)	Income of the deceased after applying deduction of 1/3rd	(₹21234-7078) = ₹14156 per month
(vi)	Compensation calculated after applying the multiplier of 16	(₹14156X12X16) = ₹2717952
(vii)	Compensation for loss of consortium	₹40000
(viii)	Compensation for loss of estate	₹15000
(ix)	Compensation for funeral expenses	₹15000
Total		**₹2787952 (rounded off to ₹2788000)**

8. Award of the Tribunal is modified and the compensation allowed to claimants for death of Suresh Kumar is enhanced from ₹24,19,200/- to ₹27,88,000/-. 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.

9. The next question, which arises for consideration in this case, is apportionment of the compensation.

10. The Tribunal has observed that claimants no. 3 and 4 were not dependants on deceased-Suresh Kumar but allowed them some part of the total amount of compensation. Both being son and daughter of claimant Parkash Chand were dependant on him and not on his brother (deceased). Parkash Chand, father of the deceased is an ex-serviceman, getting pension and is also an agriculturist, as such, was also not dependant on deceased.

11. Keeping in view above facts, amount of enhanced compensation

is ordered to be apportioned as follows:-

(i)	Wife	:	40%
(ii)	Minor daughter	:	40%
(iii)	Mother	:	20%

12. As a sequel of my discussion above, the instant appeals have merit. FAO No. 5373 of 2013 is allowed while FAO No. 8285 of 2015 is partly accepted to above extent.

November 22, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

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