IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No. 5475 of 2013(O&M)

Date of Decision: August 09 , 2018.

Bhagpati and others ...... APPELLANT(s)

Versus

Umed Singh and others ...... RESPONDENT (s)

2. FAO No. 5476 of 2013(O&M).

Santosh Devi and another ...... APPELLANT(s)

Versus

Umed Singh and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Darshan Gulati, Advocate for
Mr. Kulwant Singh Dhanora, Advocate
for the appellants in both the appeals.

Mr. Parvesh K.Saini, Advocate
for respondents No.1 and 2 in both the appeals.

Mr. D.P.Gupta, Advocate
for respondent No.3 – Insurance Company in both the appeals.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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LISA GILL, J.

This order shall dispose of FAO No.5475 of 2013 (Bhagpati and others v. Umed Singh and others) and FAO No.5476 of 2013 (Santosh Devi and another v. Umed Singh and others) as both of them arise out of the common impugned award dated 13.02.2013.

The appellants in both the appeals seek enhancement of compensation awarded to them by the learned Motor Accident Claims Tribunal, Bhiwani (for short, the 'Tribunal') vide impugned award dated 13.02.2013.

Brief facts necessary for adjudication of the case are that, two separate petitions (MACT Case No.38 and 39 of 2011) under Section 166 of the Motor Vehicles Act were filed by the claimants seeking compensation on account of the death of Kashmir Singh and Sunil Kumar, who lost their lives in a motor vehicle accident which took place on 27.02.2011. FIR No.28 dated 27.02.2011 under Sections 279/337/304A IPC was registered against respondent No.1-Umed Singh. The 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 Bolero jeep bearing No.HR-61-8454 by respondent No.1 – Umed Singh. There is no challenge to the finding of the learned Tribunal in this respect and the same has attained finality.

In Claim Case No.38 of 2011, filed by the claimants (appellants in FAO No.5475 of 2013) on account of death of Kashmir Singh, the learned Tribunal awarded a total sum of ₹5,50,000/- as compensation to the claimants vide impugned award. Income of the deceased was assessed as ₹4,000/- per month. 1/4th deduction on account of personal expenses was effected. Multiplier of 15 was applied as the deceased was 38 years old at the time of the accident. A consolidated amount of ₹10,000/- on account of loss of consortium to claimant-wife as well as towards funeral expenses and loss of estate were awarded.

In Claim Case No.39 of 2011, filed by the claimants (appellants in

FAO No.5476 of 2013) on account of death of Sunil Kumar, the learned Tribunal awarded a total sum of ₹4,42,000/- as compensation to the claimants vide the impugned award. Income of the deceased was assessed as ₹4,000/- per month. Deduction of 50% on account of personal expenses was effected and multiplier of 18 was applied as the deceased-Sunil Kumar was 19 years old at the time of the accident. A sum of ₹10,000/- towards last rites/funeral expenses were awarded.

Aggrieved therefrom, the present appeals have been filed by the claimants seeking enhancement of the compensation.

Application of multiplier as well as deduction effected on account of personal expenses by the learned Tribunal in both the cases have not been assailed. Learned counsel for the appellants however submits that the learned Tribunal has erred in assessing the income of the deceased to be ₹4,000/- per month in both the petitions whereas, the minimum wages of even an unskilled labourer at the relevant time were ₹4,348/- per month. It is further submitted that increase in income at the rate of 40% on account of loss of future prospects is required to be afforded in both the cases keeping in view the guidelines laid down by the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. It is further submitted that a meagre amount has been awarded under the conventional heads. It is thus prayed that the amount of compensation awarded to the appellants in both the claim petitions be enhanced accordingly.

Learned counsel for respondent No.3 – Insurance Company however prays that the impugned award does not call for further enhancement of the compensation in both the cases as same is reasonable and justified in the facts and circumstances of each case.

I have heard learned counsel for the parties and have gone through the file.

Liability of the Insurance company in both the cases is not in dispute and neither is there a dispute regarding the accident being caused by the rash and negligent act of respondent No.1 – Umed Singh, besides the death of Kashmir Singh and Sunil Kumar due to injuries received in this accident.

In FAO No.5476 of 2013, the deceased-Kashmir Singh was averred to be working as Senior Supervisor in Tool India Ltd., Rudarpur and earning ₹8,000/- per month. However, there is no evidence on record in respect to the same except a bald statement of the claimant, PW1 Bhagpati. Daily wages of an unskilled labourer as on the date of accident were ₹4,348/- per month in the State of Haryana. In this situation, income of the deceased-Kashmir Singh is assessed as ₹4,348/- per month. Keeping in view the guidelines laid down by the Hon'ble Supreme Court in **Pranay Sethi** (supra) increase in income at the rate of 40% on account of loss of future prospects has to be afforded as well as a sum of ₹40,000/- on account of loss of consortium to the claimant-wife, besides ₹15,000/- each towards funeral expenses and loss of estate.

Appellants-claimants in FAO No.5475 of 2013 are, thus, entitled to the amount of compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	4348 p.m. i.e. ₹52,176/- per annum

2.	Total income after addition at the rate of 40% on account of future prospects	52,176 + (52,176 **x** 40%) = 73,046
3.	Income after deduction of 1/4th on account of personal expenses	73,046 – (73,046 **x** 1/4) = 54,784
4.	Total dependancy after applying a multiplier of 15	(54,784 **x** 15) = 8,21,760
5.	Loss of estate	15,000
6.	Loss of consortium to wife	40,000
7.	Funeral expenses	15,000
	Grand Total	₹8,91,760/-

In FAO No.5476 of 2013, the deceased-Sunil Kumar was stated to be earning ₹6,000/- on account of helping his father in agricultural as well as dairy works. There is no evidence on record in this case as well in respect to the income of the deceased except a bald statement of the claimant, PW2 Santosh. As noted above, daily wages of an unskilled labourer as on the date of accident were ₹4,348/- per month in the State of Haryana. In this situation, income of the deceased-Sunil Kumar is assessed as ₹4,348/- per month. Keeping in view the guidelines laid down by the Hon'ble Supreme Court in **<u>Pranay Sethi</u>** (supra) increase in income at the rate of 40% on account of loss of future prospects has to be afforded as well as ₹15,000/- each towards funeral expenses and loss of estate is awarded.

Appellants-claimants in FAO No.5476 of 2013 are, thus, entitled to the amount of compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	4348 p.m. i.e. ₹52,176/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	52,176 + (52,176 **x** 40%) = 73,046

3.	Income after 50% deduction on account of personal expenses	73,046 – (73,046 **x** 1/2) = 36,523
4.	Total dependancy after applying a multiplier of 18	(36,523 **x** 18) = 6,57,414
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
	Grand Total	₹6,87,414/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above in each case. Claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the claimants in both the cases as determined by the learned Tribunal shall remain the same.

Both the appeals are accordingly disposed of.

(LISA GILL)
JUDGE

August 09 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No