IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.01.2018

FAO No.372 of 2015 (O&M)

Tulla Ram and others ...Appellants

Versus

Jai Singh and others ...Respondents

FAO No.2095 of 2015 (O&M)

Jaideep @ Shekhar ...Appellant

Versus

Jai Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ashish Yadav, Advocate
for the appellants in FAO No.372 of 2015.

Mr. Rakesh Dhiman, Advocate
for the appellant in FAO No.2095 of 2015.

Mr. M.B. Jain, Advocate
for the insurance company.

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REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.372 and 2095 of 2015 as these have emerged out of the same award dated 14.10.2014 passed by the Motor Accidents Claims Tribunal, Gurgaon whereby compensation has been awarded on account of death of Annu son of Ajit Singh and injuries sustained by Jaideep @ Shekhar.

FAO No.372 of 2015 has been filed by Tulla Ram and others for enhancement of compensation in regard to death of Annu whereas FAO No.2095 of 2015 has been filed by the injured for claiming enhancement.

FAO No.372 of 2015

The Tribunal has awarded compensation to the tune of Rs.7,76,040/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6630/-
2. Multiplier	18
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.7,16,040/-
5. Loss of estate	Rs.20,000/-
6. Expenses on funeral	Rs.20,000/-
7. Non-pecuniary damages	Rs.20,000/-

Counsel for the claimants has submitted that the Tribunal has not allowed benefit of increase in income for future prospects to the extent of 40%. Deduction for personal expenses to the extent of 50% should be 1/3rd as application for compensation was filed by the parents and grandfather aged about 80 years of deceased Annu.

Counsel representing the insurance company, on the contrary, would urge that the Tribunal has assessed income of the deceased on the basis of Deputy Commissioner rates in place of minimum wage available at the relevant time which is less than income assessed by the Tribunal. Another submission made by the counsel is that as Ajit Singh aged about 48 years son of Tulla Ram is alive, Tulla Ram cannot claim dependency upon his grandson Annu, therefore, Tribunal has rightly allowed deduction for personal expenses @ 50%.

I have heard counsel for the parties, perused the paper book particularly the award.

The plea of the claimants is that deceased was working with M/s Jaswant Electric Works, Gurgaon at a salary of Rs.12,000/- per month. They examined Karambir Singh, salesman from M/s Jaswant Electric Works, Gurgaon PW4. In his cross-examination, he admitted that shop owner does not have any record pertaining to payment of salary of Rs.12,000/- per month to the deceased nor name of the deceased has been shown in any government records. Under the circumstances, the Tribunal has rightly refused to rely upon testimony of PW4 with regard to employment and income of the deceased.

The Tribunal has assessed income of the deceased on the basis of DC rates which are meant for payment to the persons who are actually employed in government department on the basis of daily wage. However, for the purpose of assessing income to compute loss of dependency, ordinarily, the Tribunal and Courts rely upon minimum wage fixed by the State Government. Taking into consideration minimum wage of the relevant time fixed by the State of Haryana, income of the deceased is assessed at Rs.5250/- per month. As the deceased was 23 years old, claimants shall be entitled to increase in income for future prospects @40%. The multiplier adopted by the Tribunal is affirmed. The Tribunal has rightly allowed deduction of 50% as grandfather of the deceased cannot be held to be dependent upon his grandson during lifetime of his son and in absence of any evidence that father of the deceased aged about 48 years had any disability rendering him unable to earn livelihood for his family. In view of the above, loss of dependency comes to Rs.7,93,800/- (Rs.5250 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for expenses on funeral and another Rs.15,000/- for loss of estate.

The total compensation comes to Rs.8,23,800/- and the additional amount is Rs.47,760/- (8,23,800 – 7,76,040), payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

FAO No.2095 of 2015

With regard to injuries sustained by Jaideep @ Shekhar, the Tribunal has awarded an amount of Rs.5,68,140/-, detailed hereunder:-

1. Medical treatment	Rs.5,08,140/-
2. Physical and mental pains	Rs.20,000/-
3. Loss of amenities and loss of expectation of life	Rs.20,000/-
4. Special diet and transportation	Rs.20,000/-

Counsel for the appellant would contend that the Tribunal has not allowed compensation for loss of income for the period of treatment and recovery nor any amount for attendant charges. Indisputably, there is nothing on record suggestive of the fact that the claimant has suffered any disability on account of injuries sustained in the occurrence. However, the Tribunal has still allowed an amount of Rs.20,000/- for loss of amenities and expectation of life. Under the circumstances, claimant is allowed an additional amount of Rs.5000/- under other heads like loss of income and services of an attendant etc., payable with interest @ 7.5% per annum from the date of petition till realization.

The appeal is partly allowed in the aforesaid terms.

12.01.2018 **(REKHA MITTAL)**
ashok **JUDGE**

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