IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4409 of 2015 (O&M)
Date of decision : September 05, 2018

1. Smt. Geeta and others .....Appellants

Versus

Pardeep and another ....Respondents

FAO No. 3567 of 2016 (O&M)

2. Pardeep alias Babbu .....Appellant

Versus

Pardeep and another ....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nipun Vashist, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent No. 2 - insurance company.

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LISA GILL, J.

FAO No. 4409 of 2015 (Smt. Geeta and others Versus Pardeep and another) and FAO No. 3567 of 2016 (Pardeep alias Babbu Versus Pardeep and another) are taken up for hearing together as both arise out of a common award dated 11.12.2014.

FAO No. 4409 of 2015 has been filed by the claimant – respondents for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Rewari (hereinafter referred to as the 'Tribunal') on account of death of Surender Singh vide award dated 11.12.2014.

FAO No. 3567 of 2016 has been filed by the injured – claimant Pardeep seeking enhancement of compensation awarded to him vide award dated 11.12.2014 passed by the learned Tribunal on account of injuries suffered by him.

Brief facts necessary for adjudication of the case are that on 07.04.2013 Surender Singh and Pardeep were returning home from village Nangal Mundi on motor cycle bearing registration No. HR-36-S-0257 driven by Surender Singh at moderate speed and on correct side of the road. When they reached in the area of village Roliawas, offending vehicle Honda City car bearing registration No. HR-14-AU-4065 driven by respondent No. 1 in a rash and negligent manner came from the side of Rewari and struck the motor cycle. Injuries were received by both Surender Singh and Pardeep. They were rushed to General Hospital, Rewari where Surender Singh was declared dead and injured Pardeep was referred to PGIMS, Rohtak.

There is no dispute that Surender Singh lost his life in a motor vehicle accident, which took place on 07.04.2013 caused due to rash and negligent driving of the offending vehicle Honda City car bearing registration No. HR-14-AU-4065 driven by respondent No. 1. FIR No. 71 dated 07.04.2013 under Sections 279, 337, 304A IPC was registered at Police Station Rampura.

Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place on 07.04.2013 due to rash and negligent driving of Honda City car bearing registration No. HR-14-AU-4065 by respondent No. 1. This finding of the learned Tribunal has attained finality. The question for consideration in these appeals is whether the claimants are entitled to enhancement of compensation awarded to them. There is no dispute regarding liability of the insurance company in this case.

FAO-4409-2015

The facts, relevant for decision of FAO-4409-2015 (Smt. Geeta and others) are adverted to first. The deceased – Surender Singh was 32 years old at the time of accident according to the post mortem report (Ex.P1). Income of the deceased was assessed as ₹5,400/- per month. Deduction of 1/5th was effected. Multiplier of 16 was applied. A sum of ₹1,00,000/- was awarded for loss of consortium and ₹25,000/- towards funeral expenses. Learned Tribunal on consideration of facts and evidence on record awarded a sum of ₹9,54,440/-.

Aggrieved of the quantum of compensation, claimants have filed this appeal.

Learned counsel for the appellants submits that there is no dispute regarding the income of the deceased assessed as ₹5,400/- by the learned Tribunal. However, in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, loss of future prospects at the rate of 40% should be afforded. Learned counsel fairly states that multiplier of 16 has been correctly applied in view of guidelines laid down by the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77 and compensation on account of loss of consortium, funeral expenses is required to be reworked. It is, thus, prayed that compensation awarded to the claimants be reworked accordingly.

Learned counsel for the respondent - insurance company while refuting the arguments raised submits that adequate compensation has been awarded by the learned Tribunal which calls for no further enhancement, thus, impugned award dated 11.12.2014 be upheld.

Heard learned counsel for the parties.

As per the guidelines laid down by the Hon'ble Supreme Court in the case of **Pranay Sethi** (supra), future prospects at the rate of 40% are required to be awarded in view of the age of the deceased (32 years) thereby taking the income of the deceased to ₹7560/- (5400+2160) per month. It is noticed that deduction of $1/5^{th}$ instead of $1/4^{th}$ has been effected. Departure from normal practice has been made as it is noticed by the learned Tribunal that the claimant - widow is afflicted by polio, therefore, inference can easily be drawn that the deceased spent much less amount on himself as he would necessarily incur greater expense on his wife. I do not find any reason to vary the said deduction in the peculiar circumstances of this case. Hence, deduction of $1/5^{th}$ is maintained, thereby rendering the income of the deceased to be ₹6048 (₹7560-₹1512). Multiplier of 16 is correctly applied. Annual dependancy of the claimants is assessed as ₹11,61,216/- (₹6048x12x16). The claimants are also entitled to ₹40,000/- on account of loss of consortium, ₹15,000/- for funeral expenses and ₹15,000/- for loss of estate. Claimants are, thus, entitled to compensation of ₹12,31,216/- detailed as under:-

Loss of dependency (₹6048x12x16)	₹11,61,216/-
Loss of consortium	₹40,000/-
Loss of estate	₹15,000/-
Funeral expenses	₹15,000/-
Total	₹12,31,216/-

FAO No. 3567 of 2016 (O&M)

Learned counsel for the appellant submits that the appellant – Pardeep was working as a cobbler. As he suffered injuries which led to 21%

permanent disability of the lower limb, his capacity for earning has been severely effected. Meagre compensation has been afforded.

After hearing learned counsel for the parties, in my considered opinion, the compensation awarded to the claimant – Pardeep is required to be enhanced. Though the learned Tribunal did not believe that the claim of the appellant that he was earning a sum of ₹10,000/- by working as a cobbler, there is no denying the fact that at best the claimant may be engaged in some sort of labour work. His notional income was rightly assessed ₹5,400/- per month at par with the minimum wages of semi-skilled labourer in the year 2013. Perusal of the medical evidence on record, disability certificate (Ex.PW5/A), facts and circumstances, indeed reveals that the functional disability by the appellant cannot be less than 7%.

It has been held by the Hon'ble Supreme Court in ***Sayed Sadiq etc. versus Divisional Manager, United India Insurance Company 2014 (1) R.C.R. (Civil) 765***, that the Court should be sensitive about the functional disability suffered by the claimant and award compensation accordingly. The claimant's functional disability can be safely assessed as 7%. He is entitled to 40% increment on account of loss of future prospects in view of his age i.e. 28 years at the time of accident. Multiplier of 17 has been correctly applied.

As per the guidelines laid down by the Hon'ble Supreme Court in ***Sayed Sadiq's*** case (supra), the appellant would be entitled to loss of future income of **₹1,07,956** [(₹5400 x 7/100) + (7/100 x 40/100 x ₹5400) x 12 x 17]. A sum of ₹50,000/- is awarded on account of pain and suffering, ₹40,000/- is afforded to the claimant on account of loss of amenities. Needless to say, the appellant shall be entitled to a sum of ₹19,785/-

towards medical expenses and ₹5,000/- each towards cost of transportation and special diet as already awarded to the learned Tribunal.

The appellant is, thus, entitled to compensation detailed as under:-

Loss of future income	₹1,07,956
Pain and suffering	₹50,000/-
Loss of amenities	₹40,000/-
Special diet	₹5,000/-
Transportation charges	₹5,000/-
Medical Bills	₹19,785/-
Total	**₹2,27,741/-**

Needless to say, amount of compensation already awarded to the appellants in both the appeals shall stand deducted from the amount re-calculated. Appellants 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 realisation. Directions of the learned Tribunal regarding ratio of apportionment amongst claimants in FAO-4409-2015 and manner of disbursement shall enure.

With the abovesaid modification in the amount of compensation, both FAO No. 4409 of 2015 and FAO No. 3567 of 2016 are disposed of.

(Lisa Gill)
September 05, 2018 **Judge**
rts

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