IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 11.05.2018

FAO No.3600 of 2016 (O&M)

Kuldeep ... Appellant

Versus

Surender Singh and others ... Respondents

FAO No.2257 of 2016 (O&M)

Mahinder Singh and another ... Appellants

Versus

Surender Singh and others ... Respondents

FAO No.2462 of 2016 (O&M)

Chandni and others ... Appellants

Versus

Surender Singh and others ... Respondents

FAO No.3417 of 2016 (O&M)

Amit ... Appellant

Versus

Surender Singh and others ... Respondents

FAO No.2454 of 2016 (O&M)

Kavita Yadav and others ... Appellants

Versus

Surender Singh and others ... Respondents

FAO No.2455 of 2016 (O&M)

Shashi Kumari and others ... Appellants

Versus

Surender Singh and others ... Respondents

FAO No.3520 of 2016 (O&M)

Sonam and another ... Appellants

Versus

Surender Singh and others ... Respondents

FAO No.2620 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Chandni and others ... Respondents

FAO No.2794 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Sonam and others ... Respondents

FAO No.2793 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Shashi Kumari and others ... Respondents

FAO No.2792 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Kavita Yadav and others ... Respondents

FAO No.4448 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Mahinder Singh and others ... Respondents

FAO No.3682 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Amit and others ... Respondents

FAO No.3681 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Kuldeep and others ... Respondents

FAO No.4447 of 2016 (O&M)

Rajasthan State Road Transport Corp., Churu, Rajasthan ... Appellant

Versus

Vikash Yadav and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.K. Girdhwal, Advocate for
Mr. Sanjay Mittal, Advocate
for the claimants.

Mr. Radhe S. Sharma, Advocate
for Rajasthan State Road Transport Corp.

****

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.2257, 2454, 2455, 2462, 3417, 3520 and 3600 of 2016 filed by the claimants seeking enhancement of compensation and FAO Nos.2620, 2792 to 2794, 3681, 3682, 4447 and 4448 of 2016 filed by Rajasthan State Road Transport Corporation, Churu as these have emerged out of the same award dated 16.10.2015 passed by the Motor Accidents Claims Tribunal, Rewari whereby compensation has been awarded on account of death of Manish Kumar, Manjeet, Pritam, Ravi Kumar and Amit Yadav son of Kanwar Singh and injuries sustained by Vikas, Kuldeep and Amit Yadav son of Rajpal Singh in a motor vehicular accident that took place on 26.12.2012 between scorpio bearing No.HR-66/7371 driven by Manjeet (since deceased) and bus bearing No.RJ-10-PA/2884 of Rajasthan Roadways Transport by Surender Singh, its driver.

Counsel for Rajasthan State Road Transport Corporation, Churu, Rajasthan (hereinafter to be referred as 'the Corporation') would inform that the appeals have been preferred on the limited issue of contributory negligence of scorpio aforesaid by Manjeet, its driver.

CM No.12640-CII of 2016 in/and FAO No.3600 of 2016

Heard.

Allowed as prayed for. Delay of 04 days in filing the appeal stands condoned.

With regard to injuries sustained by Kuldeep Singh, the Tribunal has awarded compensation of Rs.1,94,909/- (rounded of to

Rs.1,95,000), detailed hereunder:-

1. Medical expenses	Rs.1,19,909/-
2. Expenses on future treatment	Rs.50,000/-
3. Special diet	Rs.10,000/-
4. Transportation charges	Rs.15,000/-

The injured suffered disability to the extent of 70% on account of right side hemeplegia. The victim has not suffered any loss of income as he was working with Delhi Police and continued to work there but disability suffered by the victim is bound to cause loss of amenities of life, claimant is awarded an amount of Rs.35,000/- towards loss of amenities of life. He is awarded a sum of Rs.35,000/- for pain and sufferings. The additional amount of Rs.70,000/- shall be payable with interest @ 7.5% per annum from the date of petition till realization.

FAO No.2257 of 2016

With regard to death of Pritam, the Tribunal has awarded compensation of Rs.4,64,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.5500/-
2. Multiplier	13
3. Deduction for personal expenses	50%
4. Loss of dependency	Rs.4,29,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss to estate	Rs.10,000/-

The claimants produced salary certificate Ex.P17 to establish that the deceased was earning Rs.6250/- per month. The Tribunal deducted Rs.750/- paid towards travelling allowance and assessed loss of income at Rs.5500/-. The amount of travelling allowance would also be available to family of the deceased and cannot be ignored for computing loss of dependency. In this context, reference can be made to judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. VS. Indira Srivastava and others, 2008(1) RCR (Civil) 359** and **Manasvi Jain VS. Delhi Transport Corporation, 2014(3) RCR (Civil) 313.**

The Tribunal has not allowed benefit of future prospects. Claimants shall be entitled to addition in income for future prospects @40% as the deceased was 23 years old. Admissible multiplier on the basis of age of the deceased is 18 as has been held in judgments of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270, Munna Lal Jain and anr. Vs. Vipin Kumar Sharma and ors., 2015 (3) SCC (Civil) 315** and **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. Deduction for personal expenses allowed by the Tribunal is affirmed. In this manner, loss of dependency comes to Rs.9,45,000/- (Rs.6250 x 12 x 18) + (40% future prospects) – (50% deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- loss to estate.

Total compensation is Rs.9,75,000/- and the additional amount is Rs.5,11,000/- (9,75,000 - 4,64,000), payable with interest @ 7.5% per annum from the date of petition till realization, to mother of the deceased.

The appeal is partly allowed in the aforesaid terms.

FAO No.3520 of 2016

With regard to death of Ravi Kumar, the Tribunal has allowed compensation of Rs.8,33,872/- (rounded of to Rs.8,33,900/-), detailed hereunder:-

1. Monthly income of the deceased	Rs.5200/-
2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.7,48,872/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of care and guidance of minor daughter	Rs.10,000/-

The plea of claimants is that the deceased was employed in Haryana Coldretreads Pvt. Ltd., Sohna at salary of Rs.8000/- per month. They did not examine any witness to substantiate their claim in this regard. The Tribunal has assessed income at Rs.5200/- per month by taking into consideration the minimum wage at the relevant time. There is no justification for increase in income and the same is affirmed. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. However, claimants shall be entitled to benefit of future prospects @ 40%. In this manner, loss of dependency comes to Rs.10,48,320/- (Rs.5200 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the

Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.11,18,320/- and the additional amount is Rs.2,84,420/- (11,18,320 - 8,33,900), payable with interest @7.5% per annum from the date of petition till realization, to minor daughter of the deceased, to be invested in fixed deposit till she attains the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.2454 of 2016

With regard to death of Amit Yadav, the Tribunal has awarded compensation of Rs.28,30,680/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.18,720/-
2. Multiplier	18
3. Deduction for personal expenses	$1/3^{rd}$
4. Loss of dependency	Rs.26,95,680/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of care and guidance of minor children	Rs.10,000/-

The claimants produced salary certificate Ex.P11 issued by the Assistant Commissioner of Police, New Delhi whereby it has been proved that the deceased was getting gross salary of Rs.21,846/- per month. The Tribunal has deducted Rs.1032/- paid as transport allowance and Rs.2094/- as ration money while computing monthly dependency at Rs.18,720/- per month. In the light of judgments of Hon'ble the Supreme Court **Indira Srivastava and others case (supra)** and **Manasvi Jain's case (supra),** entire salary of the deceased is to be taken into account for computing loss of dependency. Claimants shall be entitled to benefit of addition in income for future prospects @ 50%. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.47,18,736/- (Rs.21,846 x 12 x 18) + (50% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.47,88,736/- and the additional amount is Rs.19,58,056/- (47,88,736 - 28,30,680), payable with interest @7.5% per annum from the date of petition till realization to Prince, minor child of the deceased, to be invested in fixed deposit till he attains the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.2455 of 2016

Qua death of Manjeet, the Tribunal has awarded compensation of Rs.19,37,800/-, detailed hereunder:-

1. Net salary of the deceased	Rs.12,450/-

2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.17,92,800/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of care and guidance of minor children	Rs.10,000/-

PW2 Sushil Yadav, Director, Royal Corptravel Pvt. Ltd., Gurgaon, Haryana was examined and proved salary certificate Ex.P10 showing gross salary including conveyance allowance of Rs.15,250/-. The Tribunal has taken into consideration net salary of the deceased after deducting conveyance allowance. In the light of discussion made in FAO Nos.2257 and 2454 of 2016, entire salary of the deceased is to be taken into consideration for computing loss of dependency. Claimants shall be entitled to benefit of future prospects @ 40%. Multiplier and deduction for personal expenses allowed by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.30,74,400/- (Rs.15,250 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.31,44,400/- and the additional amount is Rs.12,06,600/- (31,44,400 - 19,37,800), payable with interest

@7.5% per annum from the date of petition till realization, to children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.2462 of 2016

The Tribunal has assessed compensation of Rs.9,26,208/- with regard to death of Manish Kumar, detailed hereunder:-

1. Monthly income of the deceased	Rs.5495/-
2. Multiplier	18
3. Deduction for personal expenses	1/3rd
4. Loss of dependency	Rs.7,91,208/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of consortium	Rs.1,00,000/-
7. Loss of care and guidance of minor child	Rs.10,000/-

Claimants shall be entitled to addition in income for future prospects @ 40%. Income of the deceased, deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs.11,07,792/- (Rs.5495 x 12 x 18) + (40% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, compensation awarded by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

1. Loss of consortium	Rs.40,000/-
2. Loss of estate	Rs.15,000/-
3. Funeral expenses	Rs.15,000/-

Total compensation is Rs.11,77,792/- and the additional amount is Rs.2,51,584/- (11,77,792 - 9,26,208), payable with interest @7.5% per annum from the date of petition till realization, to minor child of the deceased, to be invested in fixed deposit till he attains the age of majority or for a period of three years, whichever is later.

The appeal is partly allowed in the aforesaid terms.

FAO No.3417 of 2016

Amit son of Rajpal, has filed the appeal seeking enhancement of compensation on account of injuries sustained in the aforesaid motor vehicular accident.

The Tribunal has awarded compensation of Rs.20,45,500/-, detailed hereunder:-

1. Medical expenses	Rs.2,17,301/-
2. Expenses on future treatment	Rs.2,00,000/-
3. Special diet	Rs.64,533/- (rounded of to Rs.65,000)
4. Expenses on conveyance	Rs.40,000/-
5. Loss of income	Rs.11,23,200/-
6. Pain and sufferings	Rs.2,00,000/-
7. Loss of amenities of life	Rs.2,00,000/-

The Tribunal has awarded loss of income of Rs.11,23,200/- as the victim has been rendered 100% disable on account of paraplegia, by assessing his income at Rs.5200/- per month multiplied by 18 as the victim was 25 years old at the time of occurrence. As the victim has been rendered 100% disable, he shall be entitled to benefit of future prospects @ 40% for computing loss of income on account of disability. In this manner, loss of income comes to Rs.15,72,480/- (Rs.5200 x 12 x 18) + (40% future prospects).

The Tribunal has not awarded any compensation for attendant charges. The injured has been rendered disable to an extent that he would require services of an attendant round the clock. Claimant shall be entitled to compensation qua attendant charges @ Rs.2000/- per month for a period of 18 years and that comes to Rs.4,32,000/- (Rs.2000 x 12 x 18).

Compensation awarded by the Tribunal under other pecuniary and non-pecuniary heads is ordered to be affirmed. Total compensation is Rs.29,26,781/- and the additional amount of Rs.8,81,281/- (29,26,781 – 20,45,500) shall be payable with interest @7.5% per annum from the date of petition till realization. Out of additional compensation, 20% shall be released in favour of the claimant and the remaining 80% shall be invested in a fixed deposit but interest accruing thereon shall be payable to the claimant for meeting his expenses. Claimant shall be at liberty to file an appropriate application before the Tribunal for release of amount invested in fixed deposit. The Tribunal may allow release of adequate amount if the claimant is able to justify its release to meet his requirements/exigencies.

FAO Nos.2620, 2792 to 2794, 3681, 3682, 4447 and 4448 of 2016

Counsel for the Corporation would urge that the occurrence in question took place when the scorpio in which the deceased and injured were travelling was on its way to village Jat Gawda towards Narnaul side and the alleged offending vehicle came from the side of Narnaul. It is argued with vehemence that since head lights of both the vehicles did not suffer any damage as per mechanical reports Exs.R9 and R10, the present cannot be a case of head on collision as had been projected by the claimants and deposed by injured. Another submission made by counsel is that as a matter of fact, scorpio banged into the stationary bus, therefore, driver of the scorpio was solely responsible for the occurrence. In the alternative, it is argued that even if driver of the scorpio cannot be held exclusively responsible for the accident, contributory negligence is liable to be attributed to him and claim regarding death of Manjeet Singh can be compensated by the Corporation only to the extent of negligence attributed to driver of alleged offending bus.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 whereby plea of the Corporation that either the accident took place due to sole negligence of the scorpio driver or the present is a case of contributory negligence of both the vehicles has been negated in view of findings recorded in paras 11 and 12 of the award. Another submission made by counsel is that in case Manjeet, driver of the scorpio is attributed any negligence in causing the occurrence, the claimants in other appeals shall be entitled to get compensation in its entirety from the Corporation as they can recover compensation from either of the tortfeasers.

The Tribunal in para 10 of the award has noticed that Rakesh

Yadav author of FIR Ex.P13 was examined. Besides his statement, presence of Vikas, Kuldeep and Amit Yadav being injured in the accident who were travelling in the ill-fated scorpio cannot be doubted. Counsel for the Corporation has failed to point out any materials brought forth in cross examination of eye witnesses of the occurrence to establish plea of the Corporation that either the accident took place due to contributory negligence of Manjeet, driver of scorpio aforesaid or the accident took place in the manner sought to be projected during the course of evidence adduced by the driver and conductor of the offending vehicle which is otherwise beyond pleadings. The mere fact that head lights of both the vehicles were safe is of no consequence to substantiate contention of the Corporation that accident was caused by scorpio driver or any negligence can be attributed to him. I would hasten to add that the Tribunal in para 10 has noticed that the injured witnesses have deposed categorically that at the time of impact, scorpio was partly on the katcha portion of left side of the road and partly on the pucca porition of the road. They have testified that the offending vehicle came on wrong side and hit scorpio driven by Manjeet Singh. In this view of the matter, I do not find an error much less illegality in findings on issue No.1 imposing entire blame for the accident upon driver of the offending vehicle i.e. bus No.RJ-10PA-2884. In this view of the matter, Corporation cannot escape its liability to pay entire compensation to the victims assessed by the Tribunal and enhanced by this Court.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed.

No order as to costs.

11.05.2018
ashok

(REKHA MITTAL)
JUDGE

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