IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 18.08.2018

FAO 4610 of 2016 (O&M)

Sunita Kumari Devi and others ....*Appellants*

Versus

Gurdeep Singh and others ....*Respondents*

FAO 4640 of 2016 (O&M)

Pratima Kumari Raut and another ....*Appellants*

Versus

Gurdeep Singh and others ....*Respondents*

FAO 888 of 2017 (O&M)

Gurmail Singh and another ....*Appellants*

Versus

Pratima Kumari and others ....*Respondents*

FAO 889 of 2017 (O&M)

Gurmail Singh and another ....*Appellants*

Versus

Sunita Kumari and others ....*Respondents*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Neeraj Khanna, Advocate
for the claimants

Mr. Vipul Sharma, Advocate
for owner and driver of the offending vehicle

Mr. Rajesh K Sharma, Advocate
for insurance Company TATA AIG General Ins Co Ltd.

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 23.02.2016 passed by the Motor

Accidents Claims Tribunal, Panchkula (hereinafter to be referred as 'the Tribunal') whereby compensation has been awarded on account of death of Uma Shankar Raut and Bishnu Parasad Bishoyi in a motor vehicular accident that took place on 24.04.2014.

FAOs No. 4610 of 2016 and 4640 of 2016 have been filed by the claimants and whereas FAOs No. 888 of 2017 and 889 of 2017 have been filed by the owner and driver of offending vehicle.

FAO No. 4610 of 2016

The Tribunal has awarded compensation of Rs.21,64,000.00 in regard to death of Bishnu Parsad Bishoyi, detailed hereunder:-

Monthly income of the deceased	Rs.15,000.00
Addition in income for future prospects	30%
Deduction for personal expenses	1/3
Multiplier	12
Loss of dependency	Rs.18,72,000.00
Medical expenses	Rs.1,67,000.00
Loss of consortium	Rs.1,00,000.00
Funeral expenses	Rs.25,000.00

The deceased was a permanent employee of Venky's (India) Limited, Sountli. Claimants examined Yash Pal, Senior Officer Personal (PW4) to prove employment and salary of the deceased. He has produced on record salary certificate EX. P-176, copy of appointment letter, Ex.P-178 and salary sheets for the month of March 2014 Ex.P-179.

Perusal of salary certificate Ex.P-176 would reveal that gross salary of the deceased was Rs.16,280/- per month and deceased was entitled to certain allowances namely Incaw allowance Rs.800.00 per month, Fixed allowance Rs.1200.00 per month, L.T.A. Rs.417.00 per month and M.R.A. Rs.875.00 per month. The Tribunal has assessed income of deceased at Rs.15,000.00 per month by disallowing benefit of allowances to family of deceased. As income qua allowances was available to his family, the same cannot be taken out of consideration 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 rightly allowed benefit of addition in income for future prospects at the rate of 30% as the deceased was permanent employee of Venky's (India) Limited.

The deceased was born on 18.04.1972, thus, 42 years old at the time of occurrence. In the light of judgment of Hon'ble the Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another 2009 (3) R.C.R. (Civil) 77,*** admissible multiplier is 14. Deduction for personal expenses allowed by the Tribunal is correct and affirmed.

In view of the above, loss of dependency is calculated at Rs.23,70,368.00 (Rs.27,35,040.00 i.e. Rs.16,280 x 12 x 14 + Rs.8,20,512.00 (30% future prospects) – Rs.11,85,184.00 (1/3rd deduction).

Compensation qua medical expenses allowed by the Tribunal is affirmed. However, compensation allowed under conventional heads is modified to the effect that claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation is Rs.26,07,368.00 (Rs.23,70,368.00 +

Rs.70,000.00 + Rs.1,67,000.00) and additional amount is Rs.4,43,368.00 (Rs.26,07,368.00 – Rs.21,64,000.00) payable with interest at the rate of 7.5% per annum from the date of petition till realization to claimants No. 2 and 3 in the ratio of 40:60 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 4640 of 2016 (O&M)

In view of reasoning assigned while disposing of FAO No. 4610 of 2016, claimants shall be entitled to loss of dependency at Rs.16,674.00 per month; multiplier of 14; addition in income for future prospects @ 30% and deduction for personal expenses being 1/3rd.

Accordingly, loss of dependency is calculated at Rs.24,27,734.40 (Rs.28,01,232.00 *i.e.* Rs.16,674.00 x 12 x 14 + Rs.8,40,369.60 (30% future prospects) – Rs.12,13,867.20 (1/3rd deduction))

Under conventional heads, compensation allowed by the Tribunal is modified to the effect that claimants shall be entitled to Rs.70,000.00, in the light of judgment of Hon'ble the Supreme Court ***National Insurance Company Limited v. Pranay Sethi and others, 2017 SC 1270***, detailed hereunder:-

Loss of consortium to widow	Rs.40,000.00
Expenses of funeral and last rites	Rs.15,000.00
Loss of estate	Rs.15,000.00

Total compensation is Rs.24,97,934.40 (Rs.24,27,734.40 + Rs.70,000.00) and additional amount is Rs.5,00,734.40 (Rs.24,97,934.40 - Rs.19,97,000.00) payable with interest at the rate of 7.5 per month from the date of petition till realization to be shared by claimants in the ratio 30:70. The amount falling to share of minor shall be invested in Fixed Deposit till he attains the age of majority or for a period of three years whichever is later.

The enhanced compensation in both the cases shall be paid by the insurance company but subject to outcome of decision of issue No. 3 by the Tribunal in terms of order of even date passed in FAOs No. 888 and 889 of 2017.

FAOs No. 888 and 889 of 2017

Counsel for appellants would urge that the Tribunal has answered issue No. 3 qua driving licence against the driver and owner of the alleged offending vehicle and on the basis thereof, the insurance company has been given right of recovery against driver and insured of vehicle. It is argued that the insurance company did not examine a witness of the concerned Licensing Authority to prove that licence possessed by the driver was not issued by the said Licensing Authority or the same is fake. It is further argued that the mere fact that the licence was not produced in the criminal proceedings would not enure to benefit of the insurer to substantiate its plea that Gurdeep Singh was not holding a valid licence on the date of occurrence.

Counsel for the insurance company has supported findings of the Tribunal on issue No. 3. However, he would fairly concede that the insurance company has not examined a witness of the concerned Licensing Authority to prove that licence possessed by the driver was not issued by the Authority concerned.

Counsel for the appellants and insurance company have agreed that findings of the Tribunal on issue No. 3 may be set aside and the matter be remitted to the Tribunal for decision on issue No. 3 afresh on the basis of evidence to be led by the insurance company and the appellants.

In view of the above, the appeals are disposed of. Findings of the Tribunal on issue No. 3 are set aside and the matter is remitted to the Tribunal for decision on issue No. 3 afresh on the basis of evidence to be led by the insurance company and appellants.

The parties through their counsel are directed to appear before the Tribunal on 18.09.2018.

(Rekha Mittal)
Judge

18.08.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No