IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111

Date of decision: 26.11.2018

1. FAO No.6052 of 2015

Rani and others ...... **Appellants**

Versus

Harjinder Pal and another ...... **Respondents**

2. FAO No.6378 of 2015

Urmila Devi and others ...... **Appellants**

Versus

Harjinder Pal and another ...... **Respondents**

3. FAO No.7884 of 2015

New India Assurance Company Ltd. ...... **Appellant**

Versus

Rani and others ...... **Respondents**

4. FAO No.7885 of 2015

New India Assurance Company Ltd. ...... **Appellant**

Versus

Urmila Devi and others ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sagar Aggarwal, Advocate
for the appellants (in FAO-6052-2015).
for respondents No.1 to 5 (in FAO-7884-2015).

Mr. J.P. Sharma, Advocate
for the appellants (in FAO-6378-2015).
for respondents No.1 to 6 (in FAO-7885-2015).

Mr. Harsh Aggarwal, Advocate and
Mr. Aseem Aggarwal, Advocate
for the appellant (in FAO-7884 and 7885 of 2015).
for respondent No.2-Insurance Company
(in FAO-6052 and 6378 of 2015).

*****

ANIL KSHETARPAL, J.(ORAL)

Vide this judgment, I shall be disposing of four appeals bearing FAO No.6052, 6378, 7884 and 7885 of 2015 which are connected.

These are four appeals, out of which, two preferred by the Insurance Company and two preferred by the claimants for enhancement of the compensation.

Learned Motor Accident Claims Tribunal after recording a finding that the offending vehicle i.e. a small truck (Canter) was parked on the road without switching on parking lights on G.T. Road (national highway No.1), was negligent and therefore, liable to pay the compensation. The quantum of compensation would be considered later on. Learned counsel for the Insurance Company has submitted that driver and conductor had died and therefore, it must be assumed that the driver and conductor of a luxury bus were also contributory negligent. It will be noted that the respondents before the Motor Accident Claims Tribunal have not produced any evidence. On the other hand, Devinder Sharma, the eye-witness has been examined who is stated to be a passer bye travelling in a separate car but had stopped to answer the nature's call. He has stated that the bus was travelling at a normal speed on its left side when the accident took place. The accident is stated to be taken place in the month of February at 4.15 AM when it was pitch dark. Once, the offending vehicle had been parked on national highway No.1, it was obligatory for the stationery vehicle to, at least, switch on parking blinkers or take some step to warn the vehicles coming from both the directions. Since no evidence to that effect has been led, therefore, the findings of the Motor Accident Claims Tribunal on this aspect does not need any interference.

Learned counsel for the Insurance Company has further submitted that in view of the judgment passed by the Hon'ble Supreme Court in the case of *Reliance General Insurance Company Ltd. Vs. Shashi Sharma and others*, the rules as framed by the Haryana Compassionate Assistance Dependents of the deceased Government Employee's Rules, 2006, the amount receivable by the heirs of the deceased employee under the aforesaid Rules shall liable to be deducted from the amount assessed by the Motor Accident Claims Tribunal as the compensation has to be just. On the other hand, learned counsel appearing for the claimants in the case of Randhir Singh has pointed out that Randhir Singh died at the age of 37 years when he was drawing salary of Rs.22,665/- and learned Motor Accident Claims Tribunal has wrongly taken the income as Rs.17,235/-. He has further submitted that enhancement on account of future prospects to the extent of 50% had been added whereas since he was left with 21 years of service, therefore, it should be 100%. Learned counsel for the claimants has further submitted that since Randhir Singh had left behind 6 claimants, therefore, cut of $1/4^{th}$ is not permissible and it should be less than $1/4^{th}$.

The enhancement on account of future prospects has already been settled by the Hon'ble Supreme Court in the case of *National Insurance Company Ltd. Vs. Pranay Sethi, 2017(4) RCR (Civil), 1009.*

In the case of Raj Kumar, the driver, who was 38 years old, learned counsel has submitted that no doubt, the deceased was at that particular point of time was working as a contractual employee, however, all other colleagues who were similarly situated were regularized in service w.e.f. 10.07.2014 and as per the official examined, salary of the deceased would have come to Rs.26,472/-. However, he submits that Motor Accident Claims Tribunal has erred in calculating future prospects by taking an average of Rs.10,000/- and Rs.26,472/- which is erroneous. Learned counsel for the Insurance Company has submitted that the loss of income has to be seen on the date of death and any future revision of pay on account of subsequent development cannot be taken note of.

This Court has considered the submission of learned counsel for the parties. Learned Motor Accident Claims Tribunal in the case of Randhir Singh has clearly erred in taking the income to be Rs.17,235/-, although, his salary admittedly was Rs.22,665/-. 50% of the amount towards future prospects has to be added in view of the judgment passed in the case of Pranay Sethi (supra). As regards imposition of cut for own expenses, the judgment passed by the Hon'ble Supreme Court in the case of *Sarla Verma and others Vs. Delhi Transport Corporation and others, 2009 (3) RCR (Civil) 77*, is clear and a cut of $1/4^{th}$ has to be applied. However, there is force in the argument of learned counsel for the Insurance Company that the amount payable under the Rules of 2006 have to be adjusted. However, the judgment passed by the Hon'ble Supreme Court in the case of *Reliance General Insurance Company Ltd. Vs. Shashi Sharma and others* has been considered by this Court in FAO No.3064 of 2013 titled '*Kamla Devi and others Vs. Sahib Singh and others'*, decided on 30.11.2017 wherein it has been noticed that in absence of 2006 Rules, the family would have been entitled to family pension @ 50% of the last salary drawn. The amount payable as family pension cannot be adjusted in view of the judgment passed by the Hon'ble Supreme Court in the case of *Helen C. Reballo Vs. Maharashtra State Road Transport Corp., 1998 AIR (SC) 3191*.

Under conventional heads i.e. funeral expenses, loss of consortium and loss of estate, Rs.70,000/- shall be liable to be awarded. In the present case, parents are also claimants, therefore, in view of the judgment passed in the case of *Magma General Insurance Company Ltd. Vs. Nanu Ram alias Chuhru Ram and others 2018(4) Law Herald (P&H) 2786*, each parent would be entitled to filial consortium @ Rs.40,000/- each.

As regards the case of Raj Kumar, it has come in evidence that all other co-employees who were similarly situated and were employed as contractual drivers were regularized w.e.f. 10.07.2014, therefore, the Motor Accident Claims Tribunal has wrongly assessed the income at Rs.10,000/- for a period of two years which should be for a period of one year and 5 months because the accident took place on 12.02.2013. Thereafter, the income has to be assessed at Rs.26,472/- which was payable to regular employees and paid to the similarly situated persons.

Hence, the compensation of deceased-Raj Kumar payable is re-calculated as under:-

Heads	***Amount***
Income for 1 year and 5 months @ 10,000/-	Rs.1,70,000/-
Thereafter income	Rs.26,472/-
Annual income	26,472 x 12 = 3,17,664/-
Income tax Rs.2,00,000/- exempted Rs.1,17,664 @ 10% = 11,766/-	Rs.11,766/-
Income after deducting income tax	(3,17,664 – 11,766) Rs.3,05,898/-
+ Future Prospects 50% (1,52,949)	3,05,898 + 1,52,949 = 4,58,847/-
– 1/4th Deduction (Rs.1,14,712/-)	(4,58,847 – 1,14,712) Rs.3,44,135/-
Multiplier (15)	3,44,135 x 15 = 51,62,025/-

Heads	***Amount***
Conventional Heads Filial consortium	Rs.70,000/- Rs.80,000/- (Rs.40,000/- each) (51,62,025 + 1,50,000) = Rs.53,12,025/-
Income of 1 year and 5 months	Rs.1,70,000/- (Rs.54,82,025/-)
– Pension 3,05,898 x 10.5 x 1/2 = 16,05,965/-	(54,82,025 – 16,05,965) = 38,76,060/-
Amount already assessed by the Tribunal	Rs.35,19,684/-
Enhanced amount	(38,76,060 – 35,19,684) = **Rs.3,56,376**

The enhanced amount i.e. Rs.3,56,376/- shall carry interest @ 7.5% from the filing of the petition till realization.

Hence, the compensation of deceased-Randhir Singh payable is re-calculated as under:-

Heads	***Amount***
Income	Rs.22,665/-
Annual income	22,665 x 12 = 2,71,980/-
Income tax Rs.2,00,000/- exempted Rs.71,980 @ 10% = 7,198/-	Rs.7,198/-
Income after deducting income tax	(2,71,980 – 7,198) Rs.2,64,782/-
+ Future Prospects 50% (1,32,391)	2,64,782 + 1,32,391 = 3,97,173/-
– $1/4^{th}$ Deduction (Rs.99,293/-)	(3,97,173 – 99,293) Rs.2,97,880/-
Multiplier (15)	2,97,880 x 15 = 44,68,200/-
Conventional Heads Filial consortium	Rs.70,000/- Rs.80,000/- (Rs.40,000/- each) (44,68,200 + 1,50,000) = Rs.46,18,200/-
– Pension 2,64,782 x 12 x 1/2 = 15,88,692/-	(46,18,200 – 15,88,692) = 30,29,508/-
Amount already assessed by the Tribunal	Rs.37,15,020/-
Reduction amount	(37,15,020 – 30,29,508) = **Rs.6,85,512**

The pending miscellaneous applications, if any shall stands disposed of accordingly.

All the appeals are disposed of.

(ANIL KSHETARPAL)
JUDGE

26.11.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No