

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

Date of Decision : 08.10.2018

1. CM-19151-CII-2015 in/and
FAO No.6053 of 2015 (O&M)

Dharampal and others

..... Appellants

Versus

Krishan Kumar and others

..... Respondents

2. FAO No.2019 of 2015 (O&M)

Royal Sundram Alliance Insurance Company Ltd.

..... Appellant

Versus

Dharampal and others

..... Respondents

3. FAO No.3704 of 2015 (O&M)

Bhumika @ Sembai and another

..... Appellants

Versus

Krishan Kumar and others

..... Respondents

4. FAO No.4156 of 2015 (O&M)

Yash

..... Appellant

Versus

Krishan Kumar and others

..... Respondents

5. FAO No.4168 of 2015 (O&M)

Yash and another

..... Appellants

Versus

Krishan Kumar and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Bhupinder Ghanghas, Advocate
for the appellant(s)
(FAO Nos.6053, 3704, 4156 and 4168-2015).

Mr. D.K.Prajapati, Advocate
for the appellant (FAO-2019-2015) and
for the respondent-Insurance Company.

AJAY TEWARI, J. (Oral)

This order shall dispose of above mentioned five appeals. As common question of facts and law are involved the facts are being taken from FAO No.6053 of 2015.

The brief facts are that on 19.11.2013, Rachna (deceased) alongwith her parents namely Sunil Kumar-father (deceased) and Teen-mother (deceased) and her brother-Yash were going from Bhiwani to their village Riwasa on the motorcycle bearing registration No.HR-16G-9796 CD Delux being driven by Sunil. While proceeding towards Bapora side on Tosham Road, at about 12.00 NN one Ritz Car bearing registration No.HR-19F-7989 being driven by its driver-respondent No.1 rashly and negligently at a very high speed struck straight with the motorcycle and due to this heavy impact the motorcycle was dragged up to the bushes. Sunil and

and Yash had also received serious injuries on their persons. As a result of this accident Sunil, Rachna and Teena died on the same day. Claim petition was filed. The Tribunal held that the accident had been caused by the rash and negligent driving of the respondent No.1 and ordered the compensation as mentioned above.

CM-19151-CII-2015 in FAO No.6053 of 2015

For the reasons recorded, the application is allowed. The deficiency of Court fees is made good.

FAO No.6053 of 2015 and FAO-2019-2015

These two appeals have been filed against the award dated 24.12.2014 passed by the Motor Accident Claims Tribunal, Bhiwani granting compensation of Rs.20,65,000/- along with interest @ 6% per annum for the death of Sunil. Since both the parties have raked up only the issue of quantum further detailed reference to the facts would not be required.

Learned counsel for the insurance company has argued that once there was no proof of evidence the income of Rs.10,000/- per month was excessive. I find that wages for a skilled labourer as per the minimum wages prescribed at that relevant time could only have been Rs.6,000/-. Consequently, income is taken to be Rs.6,000/-.

Counsel for the Insurance Company has argued that in view of the judgment passed in *National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*, 40% had to be awarded on account of future prospects instead of 50% as awarded by the Tribunal. Counsel for the appellants is not in a position to deny this. I find this to be indeed so

and it is held that 40% has to be awarded towards future prospects.

However, counsel for the claimants points out that under the conventional heads only Rs.25,000/- have been paid whereas keeping in view the concept of filial consortium in view of the latest judgment of the Supreme Court passed in *Magma General Insurance Company Ltd., Vs. Nanu Ram @ Chuhru Ram & ors., Civil Appeal No.9581 of 2018 arising out of SLP (Civil) No.3192 of 2018 decided on 18.09.2018*, a sum of Rs.1,10,000/- had to be awarded. Therefore, Rs.85,000/- is increased under this head.

Counsel for the appellants further states that interest @6% per annum has been awarded whereas in *Magma General Insurance Company Ltd., (supra)*, the Supreme Court had awarded interest @12% per annum. In the circumstances, the entire compensation would carry interest @ 12% from the date of filing of claim petition till the date/s of payment.

Both the appeals stand disposed of.

FAO-3704-2015

This is an appeal for enhancement of compensation and for modifying the award dated 24.12.2014 passed by the Motor Accident Claims Tribunal, Bhiwani granting compensation of Rs.6,73,000/- along with interest @ 6% per annum in favour of the appellants and against the respondents.

Counsel for the appellants has argued that in the case of *Lata Wadhwa and others Vs. State of Bihar and others, (2001) 8 SCC 197* where the accident took place in the year 1989 the contribution of a housewife to the family was taken at Rs.3,000/- and in a subsequent case

bearing FAO No.3680 of 2009 titled as ***Harpal Kaur & others Vs. Parmod Kumar and others***, decided on 01.06.2016 where the death had taken place in 2007 this Court had taken the contribution of the deceased in 2007 at Rs.9,000/-. In view of the judgment of ***Paramjit Singh and another vs. Dilbagh Singh alias Bagga and others 201 (4) RCR (Civil) 895***, a Division Bench of this Court has held that where the income is taken on notional basis no deduction can be made (for the simple reason that the income is notional). Similarly, in ***FAO No.1492 of 2018 titled as Ram Mehar and others Vs. Bhupinder and others decided on 29.08.2018***, this Court held that there can neither be addition of future prospects in case of notional income nor can there be deduction. Keeping in view the fact that in the present case the death had taken place in 2013, the contribution of the deceased is taken as Rs.11,000/-. There shall neither be any addition nor deduction.

Counsel for the appellants has argued that tribunal has awarded Rs.25,000/- under the conventional heads. Under the conventional heads a sum of Rs.85,000/- more is awarded in view of the judgment passed in ***Magma General Insurance Company Ltd., (supra)***.

Counsel for the appellants further states that interest @6% per annum has been awarded whereas in ***Magma General Insurance Company Ltd., (supra)***, the Supreme Court had awarded interest @12% per annum. In the circumstances, the entire compensation would carry interest @ 12% from the date of filing of claim petition till the date/s of payment.

Appeal is allowed in the above terms and the award is modified accordingly.

FAO-4156-2015

This is an appeal for enhancement of compensation in an injury case. Learned counsel has argued that the tribunal has awarded a lump-sum amount of Rs.58,000/- (Rs.16,000/- on account of purchase of medicines, doctor's charges and Rs.2,000/- towards hospitalization and Rs.40,000/- on account of pain and sufferings and transportation etc.).

I find that there is no scope for enhancement.

Appeal stands dismissed.

FAO-4168-2015

This is an appeal for enhancement of compensation and for modifying the award dated 24.12.2014 passed by the Motor Accident Claims Tribunal, Bhiwani granting compensation of Rs.5,00,000/- along with interest @ 6% per annum in favour of the appellants and against the respondents.

In the present case a sum of Rs.5,00,000/- has been awarded for the death of 5 years old minor. I find no scope for enhancement.

Appeal stands dismissed.

The statutory amount be remitted back to the tribunal for disbursal to the claimants.

Since the main cases have been decided, the pending civil miscellaneous applications, if any, also stand disposed of.

(**AJAY TEWARI**)
JUDGE

08.10.2018
Pooja sharma-I