

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 25.07.2018

FAO No.5393 of 2016 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Reshma Devi and others ... Respondents

FAO No.5394 of 2016 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Panmeshwari Devi and others ... Respondents

FAO No.5395 of 2016 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Vidya and others ... Respondents

FAO No.5396 of 2016 (O&M)

National Insurance Co. Ltd. ... Appellant

Versus

Krishna Devi and others ... Respondents

FAO No.694 of 2017 (O&M)

Panmeshwari Devi and others ... Appellants

Versus

Munshi Ram and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Harjinder Singh, Advocate for the insurance company.

Mr. Sant Lal Barwala, Advocate
for the appellants in FAO No.694 of 2017 and
for respondents No.1 to 4 in FAO No.5394 of 2016.

None for the claimants
in FAO Nos.5393, 5395 & 5396 of 2016.

Mr. Sunil Saharan, Advocate
for owner and driver.

REKHA MITTAL, J. (Oral)

By way of this order, I intend to dispose of FAO Nos.5393 to 5396 of 2016 and 694 of 2017 as these have emerged out of the same award dated 07.05.2016 passed by the Motor Accidents Claims Tribunal, Hisar whereby compensation has been awarded on account of death of four persons in a motor vehicular accident that took place on the fateful day of 29.09.2013 when they were travelling in bolero jeep bearing No.HR-20-S-5162.

Counsel for the insurance company would inform that the appeals have been preferred to assail quantum of compensation assessed by the Tribunal as well as on the question of the insured being guilty of violating terms and conditions of insurance by using the vehicle in question for commercial purpose.

FAO Nos.5393 to 5396 of 2016 have been filed by the

National Insurance Co. Ltd. (hereinafter to be referred as 'the insurance company') whereas FAO No.694 of 2017 has been filed by claimants Panmeshwari Devi and others seeking enhancement of compensation on account of death of Rajender Singh in regard whereof FAO No.5394 of 2016 has been filed by the insurance company.

FAO No.5393 of 2016

The Tribunal has awarded compensation of Rs.15,98,760/- (rounded of to Rs.16,00,000/-), detailed hereunder:-

1. Monthly loss of income (loss of pension)	Rs.15,263/-
2. Multiplier	9
3. Deduction for personal expenses	1/6 th
4. Loss of dependency	Rs.13,73,760/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of estate	Rs.1,00,000/-
7. Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company would urge that as family of the deceased shall be entitled to pension to the tune of Rs.10,065/- per month, claimants are entitled to loss of dependency qua difference of pension and family pension. The Tribunal has allowed deduction of 1/6th but the same should be 1/4th as application for compensation has been filed by 6 persons.

There is no representation on behalf of the claimants, despite service.

The claimants shall be entitled to loss of dependency only qua

difference of pension drawn by the deceased and family pension available to family of the deceased. In this context, reference can be made to judgment of this Court **Charanjit Singh Vs. Harish Kumar Sachdeva and others, FAO No.10228 of 2014, decided on 30.01.2018 and connected cases**. As the deceased was more than 61 years of age, admissible multiplier would be 7. Contention raised by the insurance company that deduction for personal expenses should be 1/4th is correct when examined in the light of enunciation laid down in **Sarla Verma & Ors vs Delhi Transport Corp.& Anr, 2009 (3) RCR (Civil) 77**. Compensation allowed under conventional heads is restricted to Rs.70,000/- in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited Vs. Pranay Sethi and Ors., 2017 SCC 1270**. In this manner, loss of dependency is calculated at Rs.3,27,474/- [(Rs.5198 x 12 x 7) – (1/4th deduction for personal expenses)].

The deceased died at the age of 61/62 years. There is nothing on record suggestive of the fact that deceased was suffering from any ailment rendering him unable to take up some post retirement job. Though no appeal has been preferred by the claimants seeking enhancement of compensation but the first appellate Court can modify the judgment passed by the trial Court in an effort to pass a judgment that ought to have been passed by the trial Court.

The deceased left behind family consisting of his widow, two

sons, two daughters and a widowed mother aged 82 years. Taking a clue from the minimum wage available at the relevant time coupled with age of the deceased and the fact that the deceased was a retired government servant, interest of justice would be served, if income of the deceased is assessed at Rs.6000/- per month. After applying deduction to the extent of 1/4th and multiplier of 7, loss of dependency in this regard is calculated at Rs.3,78,000/- [(Rs.6000 x 12 x 7) – (1/4th deduction for personal expenses)].

Total compensation is Rs.7,75,474/- and compensation awarded by the Tribunal is reduced to the extent of Rs.8,24,526/- (16,00,000 - 7,75,474). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

Disposed of, accordingly.

FAO No.5394 of 2016 and 694 of 2017

The Tribunal has awarded compensation of Rs.8,19,000/- (rounded of to Rs.8,20,000/-) in regard to death of Rajender Singh, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Multiplier	11
3. Deduction for personal expenses	1/4 th
4. Loss of dependency	Rs.5,94,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of estate	Rs.1,00,000/-

7. Loss of consortium

Rs.1,00,000/-

Counsel for the insurance company would urge that application for compensation has been filed by the widow and three adult sons of Sh. Rajender Singh. Ramkesh claimant No.2 and one of the sons of deceased Rajender Singh appeared in the witness box. He has admitted that all three sons of Rajender Singh are married and financially independent, living separate from their parents. It is argued that in the given circumstances, deduction for personal expenses should be 50% as only widow of the deceased is entitled to loss of dependency. Compensation allowed under conventional heads is liable to be restricted to Rs.70,000/- in the light of judgment **Pranay Sethi and others's case (supra)**.

Counsel for the claimants has supported assessment made by the Tribunal except seeking enhancement by allowing benefit of increase in income for future prospects.

The Tribunal has assessed income of the deceased at Rs.6000/- per month. There is no justification for increase in income of the deceased. Application for compensation has been filed by the widow and three grown up sons of the deceased who are economically independent as per the facts elicited in cross examination of Ramkesh. Even if widow of the deceased is held to be the only dependent, deduction for personal expenses cannot be more than 1/3rd. In this context, reference can be made to Division Bench judgment of Madhya Pradesh High Court **Anurag Jain and others vs. Ramveer Singh and others, 2007 (4) TAC 279**, judgment of Karnataka

High Court **Ningappa Ramanna Kori and another vs. Tamil Nadu State Transport (Madurai) Ltd., 2016 AAC 1629** and of this Court **Pawan Kumar and others vs. Ramesh Kumar and others, 2016(1) Law Herald 758**. The Tribunal has rightly applied multiplier of 11 for computing loss of dependency. However, claimants shall be entitled to increase in income for future prospects @ 10%. In this manner, loss of dependency is calculated at Rs.5,80,800/- [(Rs.6000 x 12 x 11) + (10% future prospects) - (1/3rd deduction for personal expenses)].

Under conventional heads, compensation allowed 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.6,50,800/- and compensation awarded by the Tribunal is reduced to the extent of Rs.1,69,200/- (8,20,000 - 6,50,800). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

Disposed of, accordingly.

FAO No.5395 of 2016

With regard to death of Jagdish Rai, the Tribunal has assessed compensation of Rs.25,60,608/- (rounded of to Rs.25,60,000/-).

Counsel for the insurance company would urge that the

Tribunal has assessed loss of dependency by applying split multiplier but did not deduct the amount which shall be available to family of the deceased under Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (in short 'Rules of 2006'). It is further argued that compensation allowed under conventional heads needs to be restricted to Rs.70,000/-.

There is no representation on behalf of the claimants.

Jagdish Rai was drawing salary of Rs.48,684/- per month as he was working as Drawing Teacher in Government High School, Chainot. He was born on 24.05.1957 and unfortunately died in September, 2013 meaning thereby that he was 56 years and 4 months old at the time of occurrence. After deducting liability to pay income tax (Rs.46,841/-), his annual income is calculated at Rs.5,37,367 (5,84,208 – 46,841). In view of age of the deceased, admissible multiplier would be 9. Though the deceased was to retire at the age of 58 years i.e. after a period of 1 year and 8 months from the date of accident but the split multiplier cannot be applied for computing loss of dependency. In this context, reference can be made to judgment of this Court **Jasmel Kaur and another VS. Sukhraj Singh and others, FAO No.4858 of 2012 and another connected case, decided on 07.02.2018.**

The deduction for personal expenses allowed by the Tribunal is correct and affirmed. Claimants shall be entitled to benefit of increase in income for future prospects @ 15%. In this manner, loss of dependency is

calculated at Rs.41,71,311/- [(Rs.5,37,367 x 9) + (15% future prospects) – (1/4th deduction for personal expenses)].

The family of the deceased shall be entitled to benefit of compassionate assistance for a period of 1 year and 8 months as the deceased was to retire at the age of 58 years. The salary @ Rs.48,684/- for a period of 20 months would be Rs.9,73,680/-. In the light of judgment of this Court **New India Assurance Co. Ltd. Vs. Ajmero and others, FAO No.2648 of 2016, decided on 31.07.2017** only 50% of the amount available as compassionate assistance is liable to be deducted for computing loss of dependency. After deducting an amount of Rs.4,86,840/-, loss of dependency comes to Rs.36,84,471/- (41,71,311 - 4,86,840).

Compensation awarded by the Tribunal under conventional heads 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.37,54,471/- and the additional amount of Rs.11,94,471/- (37,54,471 – 25,60,000), is payable with interest @ 7.5% per annum from the date of petition till realization.

Disposed of, accordingly.

FAO No.5396 of 2016

With regard to death of Banwari lal, the Tribunal has assessed

compensation of Rs.6,57,000/-, detailed hereunder:-

1. Monthly income of the deceased	Rs.6000/-
2. Multiplier	9
3. Deduction for personal expenses	1/3 rd
4. Loss of dependency	Rs.4,32,000/-
5. Expenses on funeral	Rs.25,000/-
6. Loss of estate	Rs.1,00,000/-
7. Loss of consortium	Rs.1,00,000/-

Counsel for the insurance company has submitted that as the application for compensation has been filed by the widow and two adult sons of the deceased, deduction for personal expenses should be 50%. Compensation allowed under conventional heads is liable to be restricted to Rs.70,000/-.

The plea of the insurance company with regard to faulty deduction for personal expenses is not meritorious and liable to be rejected. Even if sons of the deceased are not held to be dependent upon him and only widow is allowed loss of dependency, admissible deduction would be 1/3rd. In this context, reference can be made to judgments in **Anurag Jain and others's case (supra)**, **Ningappa Ramanna Kori and another's case (supra)** and **Pawan Kumar and others's case (supra)**. However, compensation allowed under conventional heads 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.5,02,000/- and compensation allowed by the Tribunal is reduced to the extent of Rs.1,55,000/- (6,57,000 – 5,02,000). The insurance company shall be entitled to recover the excess amount, if already paid, by filing an application before the Tribunal.

Disposed of, accordingly.

(REKHA MITTAL)
JUDGE

25.07.2018
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Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No