IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

(1)

FAO No.8207 of 2014 (O&M)
Date of Decision: April 23, 2018.

Shri Ram General Insurance Company

..........APPELLANT(s).

VERSUS

Smt. Meenu @ Munni Devi and others

........RESPONDENT(s).

(2)

FAO No.5765 of 2015 (O&M)

Meenu @ Munni Devi and others

..........APPELLANT(s).

VERSUS

Khushal Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajat Garg, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant in FAO-8207-2014 and
for respondent No.3 in FAO-5765-2015.

Mr. Ashwani Arora, Advocate
for respondents No.1 to 4 in FAO-8207-2014
and for appellants in FAO-5765-2015.

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SURINDER GUPTA, J.

The appeals captioned above have been taken up together for disposal as both arise from award dated 11.04.2014 passed by Motor Accident Claims Tribunal, SAS Nagar (Mohali) (later referred to as 'the tribunal') relating to death of Neeraj Kumar (later referred to as 'the deceased') in a motor vehicle accident, which took place on 19.07.2012 due to rash and negligent driving of Tipper bearing registration No.PB-12-1743 (later referred to as 'the offending vehicle') by its driver Khushal Singh.

Appeal bearing FAO No.5765 of 2015 has been filed by appellants-claimants seeking enhancement of compensation while in FAO No.8207 of 2014 insurer of the offending vehicle i.e. Shri Ram General Insurance Company Limited has sought reduction of compensation awarded by the tribunal.

As the only issue involved in both these appeals is quantum of compensation, the detailed facts relating to the accident are being skipped for the sake of brevity.

The compensation awarded by the tribunal was computed as follows:-

(i)	Name of the deceased	Neeraj Kumar
(ii)	Age of the deceased	32 years
(iii)	Income of the deceased	₹12000 p.m.
(iv)	50% addition towards future prospects	₹12000+6000=₹18000 p.m
(v)	Deduction towards personal expenses 1/4th	₹18000-₹4500=₹13500 p.m.
(vi)	Multiplier applied 16	₹13500X12X16 = ₹25,92,000/-
(vii)	Loss of love and affection (claimant No.2)	₹50000
(viii)	Loss of consortium to claimant No.1.	₹50000
(ix)	Funeral expenses	₹25000
	Total	₹27,17,000/-

Learned counsel for the insurance company has argued that the tribunal has taken income of the deceased as ₹12,000/- per month, without any basis or documentary evidence in this regard and then added 50% in the income of the deceased towards future prospects. As per the observations in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009***, the claimants are entitled to 40% addition in the income of the deceased towards future prospects. The deduction towards the personal expenses of the deceased was made as 1/4th instead of 1/3rd as father of the deceased, who himself is a pensioner and was himself getting ₹15,000/- per month as pension, as such, was not dependant on the deceased. The tribunal has also awarded compensation of ₹1,25,000/- under the conventional heads instead of ₹70,000/- as per the observations in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***.

Learned counsel for the claimants has argued that the claimants have placed on record documentary evidence to show that the deceased was actively involved in business. Besides running a cement and stationery shop, he had taken a petrol pump of Shri Parminder Lalka Proprietor of M/s Lalka H.P. Centre situated at Village and Post Office Allowal Bhadson Road, Patiala for a period of three years on payment of lease money of ₹10 lakhs. Receipt of payment of ₹2,25,000/- as per the lease agreement was also produced on file as Ex.P7. Deceased had also deposited a sum of ₹2,80,000/- in the account of lessor on 16.02.2012. This shows that deceased was having good business. He had also purchased a plot measuring 2 *biswas*, 6 and half *biswansis* vide sale deed 22.07.2011, with his mother on payment of ₹13 lakhs as sale consideration. This shows that he was having enough means and income. Child of the deceased namely Master Purvaansh Sokhal was studying in a very good school "Kids Belly School". The claimants have placed on record receipt of payment of tuition fee and transport charges of the school, which were ₹800/- and ₹300/₹400 per month. In the year 2011-2012, a person could spent more than ₹1000/- per month on the school fee of his son only if he had a good income. Though the claimants have alleged the income of deceased as ₹40,000/- per month but they could not produce any income tax return. However, due to non-production of income tax return, the other evidence on record indicating income of deceased cannot be discarded. From the evidence on record, it is proved that deceased was having income as claimed in petition and the income of the deceased as taken by the tribunal is on lower side.

The deceased was 32 years of age. The tribunal has taken his income on two scores. Firstly, from the Petrol Pump of which lease agreement was produced, his income was taken as ₹6000/- per month and from his business of cement and stationery shop, another income of ₹6000/- was assessed. When the evidence regarding the income of a deceased/injured is not coming on record, the tribunal has to indulge in guess work. Though, it can help in reaching somewhere near the income of the deceased but the exact income of a person cannot be calculated. In this case, the claimants have claimed income of the deceased as ₹40,000/- but have not produced any documentary evidence like income tax returns of the deceased, his business account books, statement of bank account etc. It is, however, proved that besides his business of cement and stationery, deceased had taken on lease a petrol pump for three years on lease money of ₹10 lakhs and he had made payment of 5,05,000/- to the lessor. The child of the deceased was also studying in a good school, where he was paying around ₹1000-1100 per month as school fee/transportation charges. He had also purchased a plot with his mother for a consideration of ₹13,00,000/- vide sale deed dated 25.07.2011. Keeping in view the above facts, I am of the opinion that the income of the deceased from all sources as assessed by the tribunal is on lower side and can be enhanced to ₹15000/- per month.

As per the law settled by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** the claimants are entitled to 40% addition in the income of the deceased towards future prospects instead of 50% as allowed by the tribunal. Father of the deceased was not dependant on him as he is a pensioner and was getting ₹15,000/- per month as pension at the relevant time. The tribunal has awarded compensation of ₹1,25,000/- under the conventional heads, which is to be restricted to ₹70,000/-.

Keeping in view the above discussion, the compensation to which the claimants are entitled, is reassessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹15000 per month
(ii)	40% of above (i) to be added as future prospects	(₹15000+₹6000)= ₹21000 per month
(iii)	Deduction of 1/3rd towards personal expenses of the deceased	(₹21000-₹7000)= ₹14000 per month
(iv)	Compensation after multiplier of 16 is applied	(₹14000X12X16)= ₹2688000
(v)	Loss of consortium	₹40000
(vi)	Loss of estate	₹15000
(vii)	Funeral expenses	₹15000
Total		₹27,58,000/-

As a sequel of my discussion above, appeal filed the Shri Ram General Insurance Company bearing FAO No.8207 of 2014 stands dismissed while the appeal filed by claimants bearing FAO No.5765 of 2015 has merits and is accepted. The award of the tribunal is modified and the compensation allowed to the claimants is enhanced from ₹27,17,000/- to ₹27,58,000/- for death of Neeraj Kumar. Liability to pay the amount of compensation shall be as per award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. The amount of enhanced compensation shall be apportioned between claimants No.1 to 3 in equal shares. Insurance company will deposit the shares of claimants No.1 and 3 in their bank accounts or pay the same through demand drafts. The share of minor appellant No.2, who as per the memo of parties is still minor, which is quite nominal be also deposited in the account of his mother, so that she may use it for his studies and brought up. The claimants shall also be entitled to costs of this appeal.

(SURINDER GUPTA)
JUDGE

April 23, 2018.
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***