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

(1)

FAO No.8401 of 2014 (O&M)
Date of Decision: March 23, 2018.

Shri Ram General Insurance Company Limited
..........APPELLANT(s).

VERSUS

Samina and others
........RESPONDENT(s).

(2)

FAO No.8402 of 2014 (O&M)

Shri Ram General Insurance Company Limited
..........APPELLANT(s).

VERSUS

Sirdar and others
........RESPONDENT(s).

(3)

FAO No.8430 of 2014 (O&M)

Shri Ram General Insurance Company Limited
..........APPELLANT(s).

VERSUS

Jubair Khan and others
........RESPONDENT(s).

(4)

FAO No.8470 of 2014 (O&M)

Smt. Aashubi
..........APPELLANT(s).

VERSUS

Mohd. Subba and others
........RESPONDENT(s).

(5)

FAO No.1271 of 2015 (O&M)

Jubair Khan and others

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

VERSUS

Mohd. Sabba and others

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

(6)

FAO No.2340 of 2015 (O&M)

Sirdar and others

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

VERSUS

Mohd. Sabba and others

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

(7)

FAO No.2780 of 2015 (O&M)

Jubair Khan and others

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

VERSUS

Mohd. Sabba and others

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

(8)

FAO No.6726 of 2015 (O&M)

Maimuna and another

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

VERSUS

Mohd. Sabba and others

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

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant in FAO Nos. 8401, 8402 and 8430 of 2014
and for respondent-insurance company in remaining appeals.

Mr. Subhash Rana, Advocate for

Mr. Sanjeev Kumar Panwar, Advocate
for respondent No.1 to 6 in FAO-8401-2014,
for respondents No.1 to 3 in FAO-8430-2014 and
for appellants in FAO-1271-2015 and FAO-2780-2015.

Mr. Ashish Gupta, Advocate for
Mr. Arjun Atri, Advocate
for appellants in FAO-8470-2014.

Mr. Manjeet Kumar, Advocate for
Mr. Mohammad Arshad, Advocate
for appellants in FAO-2340-2015, FAO-6726-2015 and
for respondents No.1 to 3 in FAO-8402-2014.

Mr. S.K. Bawa, Advocate
for respondents No.1 to 6 in FAO-8401-2012.

Mr. Shiva Khurmi, Advocate
for respondents-driver and owner of offending vehicle
in all the appeals.

****

SURINDER GUPTA, J.

Common facts in all the above captioned appeals in which the award passed by the Motor Accident Claims Tribunal (for short-the Tribunal), Mewat at Nuh and Palwal are under challenge, have been discussed by the the Tribunal, Mewat in para 2 of the award as follows:-

> "Common facts of all the claim petitions are that on 28.03.2013 at about 2.00-2.30 PM in the area of village Mohadbas PS Ferozepur Jhirka the respondent No.1 while driving his vehicle make Hywa dumper no.(HR-74-2001) in a rash and negligent manner hit to bus no.RJ-18P-1881 wherein Rati Khan son of Hurmat (husband of petitioner No.1 father of petitioners no.2 to 5 and son of petitioner no.6 in petition no.100/2013), Rahul son of Pehlu and Maimuna (petitioners in petition no.99/2013) Arshida (daughter of Sirdar, petitioner no.1 and mother of petitioners no.2 and 3 in petition no.105/2013, Shakil (son of petitioner Aashubi in

> petition no.101/2013), Charan Singh (petitioner in petition no.62/2013 and Aamin (petition in petition no.60/2013) along with other passengers were travelling. As a result of the impact, all the passengers including the aforesaid persons suffered multiplier, simple as well as grievous injuries. Rati Khan son of Hurmat, Rahul son of Pehlu Arshida daughter of Sirdar and Shakil son of Aasin died at the spot whereas Charan Singh and Aamin suffered grievous injuries. The dead body of the deceased were taken to G.H. Mandikhera, where post-mortem was conducted."

FAO-8402-2014, FAO-8430-2014, FAO-1271-2015 & FAO-2340-2015

For death of Arshida, two separate claim petitions were filed. One claim petition was filed before the Tribunal, Mewat by her father Sirdar and two minor daughters namely Rumasiya and Laiba (MACT case No.105 of 2013). Another petition under Section 166 if Motor Vehicles Act, claiming compensation for the death of Arshida was filed by her ex-husband Jubair Khan and two minor daughters Baby Rumasiya and Laiba (MACT case No.264 of 2013) before the Tribunal, Palwal. While the Tribunal, Mewat awarded compensation of ₹10,80,800/-, the Tribunal at Palwal awarded a compensation of ₹4,95,800/-. Against the claim passed by the Tribunal, Mewat and the Tribunal, Palwal, insurer of the offending vehicle i.e. Shri Ram General Insurance Company Limited has filed two separate appeals i.e. FAO-8402-2014 and FAO-8430-2014. The claimants in both the petitions have also filed separate appeals i.e. FAO-1271-2015 and FAO-2340-2015 seeking enhancement of compensation. Appeal bearing No.FAO-1271-2015 has been filed by Jubair Khan and two minor daughters of deceased Arshida while appeal bearing No.FAO-2340-2015 has been filed by father and two minor daughters of deceased Arshida.

It is to be noted here that both the minor daughters of deceased Arshida were made party in the claim petition separately filed before the Tribunal, Mewat at Nuh and Palwal, as such the claimants, minor daughters in both the claim petitions are common.

Learned counsel for insurance company has argued that two claim petitions regarding death of Arshida filed separately were not maintainable. So far as the ex-husband of the deceased is concerned, he was not dependant on her before the accident, as Arshida has taken divorce with him and was living with her father. This fact was specifically stated by her father in his claim petition. As such, ex-husband of the deceased was not dependant on her and is not entitled to any compensation. The claim petition filed by him is not maintainable. Sirdar father of deceased Arshida while appearing as PW2 before the Tribunal, Mewat at Nuh has stated that deceased Arshida was his daughter and her husband had given her divorce about two years ago and since then, she was residing with him at village Dhond Kalan, Firozpur Jhirka, Distt. Mewat, along with her children. In view of statement of father of the deceased, it is apparent that her ex-husband Jubair was not dependant on the deceased, so is the status of father of the deceased. Two minor daughters of deceased were dependant on her and entitled to the entire amount of compensation awarded by the Tribunal. In claim petition filed by Sirdar for himself and on behalf of two daughters of the deceased, compensation of ₹10,80,800/- has been awarded while in other claim petition, compensation of ₹4,95,800/- was awarded. There cannot be two awards regarding a person, who died in a motor vehicle accident, as such, claim petition allowing higher amount of compensation, held as maintainable and the award passed by the Tribunal, Palwal, is set aside.

Quantum of Compensation

The Tribunal has assessed income of deceased Arshida as ₹5200/- per month by taking her as housewife. She was 30 years of age and addition of 50% was made in her income towards future prospects. After making deduction of 1/3rd from the income of the deceased, multiplier of 17 was applied and by adding expenses of ₹20,000/- for burial and last rites and total compensation of ₹10,80,800/-, was allowed.

Learned counsel appearing for insurance company has argued that firstly the addition of 50% in the income of the deceased towards her future prospects is to be restricted to 40% in view of the law laid down by Hon'ble Apex Court in case of ***National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009.*** In the absence of proof of any business or profession of the deceased, she is to be considered as unskilled worker and income of the deceased assessed by the Tribunal is on higher side.

Learned counsel for the claimants (FAO-2340-2015) has argued that deceased Arshida was only earning member of the family. She was not only looking after her minor daughters but also taking care of her old father, with whom she was living after being divorced by her husband. The Tribunal has not taken note of this fact while assessing income of the deceased as housewife. In addition to her income, claimants are also entitled to value of services she was rendering as mother of her two minor daughters.

Father of deceased while appearing as PW2 has deposed that deceased was doing agricultural and tailoring work, thereby, earning ₹15,000/- per month. As per his statement, she has been divorced by her husband and was living with him (father-PW2). This shows that deceased was looking after her children while living with her father and was an earning hand. The Tribunal has assessed her income as ₹5200/- per month by taking her as housewife. A lady, who is doing stitching/tailoring work, is to be treated as a skilled worker and even by applying minimum wages prescribed by the state of Haryana at the relevant time, the income of the deceased can be safely assessed as ₹6,000/- per month at the time of her death and keeping in view the services rendered by her to the claimants.

I agree with the contention of learned counsel for the insurance company that 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% increase in the income of the deceased towards future prospects.

Keeping in view the above facts, the compensation to which the claimants Rumasiya and Laiba (FAO No.2340 of 2015) are entitled, is re-assessed as follows:-

Sl.No.	*Heads*	*Calculation*
(i)	Income of the deceased	₹6000/- per month
(ii)	40% of above (i) to be added as future prospects	(₹6000+₹2400)= ₹8400 per month
(iii)	Deduction of 1/3rd towards personal expenses of the deceased	(₹8400-₹2800)= ₹5600 per month
(iv)	Compensation after multiplier of 17 is applied	(₹5600X12X17)= ₹1142400

Sl.No.	*Heads*	*Calculation*
(v)	Loss of estate	₹15000
(vi)	Funeral/burial expenses	₹15000
Total		₹11,72,400/-

The enhanced amount of compensation shall be shared by both minor claimants Rumasiya and Laiba in equal shares. As discussed above, the father of deceased Arshida was not dependant on her, as such, he is not entitled to any share from the enhanced amount of compensation. Consequently, FAO No.2340 of 2015 is allowed in above terms and FAO No.8402 of 2014 is dismissed. As the award passed by the tribunal, Palwal for death of Arshida in motor vehicle accident has been set aside, FAO No.8430 of 2015 is allowed and FAO No.1271 of 2015 is dismissed.

<u>FAO-8401-2015</u>

Learned counsel for appellant-insurance company has argued that the Tribunal while computing income of the deceased has made addition of 50% in his income towards future prospects, while as per the law settled by ***National Insurance Company Limited Vs. Pranay Sethi and others (supra),*** addition of 40% in the income of the deceased could be made.

The Tribunal has taken the income of the deceased as ₹5200/- being a skilled worker. As per the letter of Labour Commissioner, Haryana dated 22.02.2013, the minimum wages of skilled worker as on 01.01.2013 were prescribed as ₹5602.15 for skilled-A and ₹5732.15 for skilled-B. As such, income of the deceased has been assessed as less than minimum wages prescribed for the skilled worker by the State of Haryana. Besides this, the deceased had left behind his wife, children and mother and the claimants are entitled to compensation of ₹70,000/- under the conventional heads i.e. loss of consortium, loss of estate and funeral/burial expenses, While the Tribunal has awarded compensation of ₹30,000/- on this score.

I am fully aware that the claimants have not preferred any appeal against the quantum of compensation. It is the insurance company, which is challenging the quantum. However, keeping in view the fact that in case the Tribunal has applied minimum wages prescribed for the skilled worker by the State of Haryana at the relevant point of time, the quantum of compensation would have been higher even by applying 40% addition in the income of the deceased towards future prospects.

Keeping in view the above facts, I find no reason to interfere with the quantum of compensation, as awarded by the Tribunal and the appeal filed by insurance company (FAO-8401-2014) has no merits.

FAO-8470-2014, FAO-6726-2015 & FAO 2780-2015

The aforesaid appeals have been filed by the claimants seeking enhancement of compensation for the death of Arman@Rahul aged about 12 years (FAO-2780-2015), Shakil aged 11 years (FAO-8470-2014) and Rahul aged 14 years (FAO-6726-2015).

Learned counsel for the appellant(s) have sought enhancement of compensation for the death of minor children as per the law settled by Hon'ble Apex Court in case of ***Kishan Gopal and another Vs. Lala and others 2013 A.C.J. 2594,*** wherein Hon'ble Apex Court has awarded compensation of ₹5,00,000/- for the death of minor child aged about 10 years.

Learned counsel for respondent-insurance company while not disputing the law settled by Hon'ble Apex Court in case of ***Kishan Gopal and another Vs. Lala and others (supra)*** has argued that Hon'ble Apex Court while awarding compensation of ₹5,00,000/-, has also allowed compensation of ₹50,000/- towards loss of love and affection which cannot be allowed as per the law settled in case of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra).***

In view of submissions of learned counsel for the parties, the claimants in the aforesaid three appeals are awarded compensation in the same terms, as awarded by the Hon'ble Apex Court in case of ***Kishan Gopal and another Vs. Lala and others (supra).*** Though the compensation under the head of loss of love and affection can not be allowed but the claimants are entitled to compensation for the loss of estate and funeral/burial expenses and keeping in view the fact that in this case, the accident had taken place in the year 2013 i.e. much after the date when the accident was caused in case of ***Kishan Gopal and another Vs. Lala and others (supra)*** (which took place in the year 1992). The compensation amount in all the three aforesaid appeals is enhanced to ₹5,00,000/- each.

As a sequel of my above discussion, all the eight appeals stand disposed of as follows:-

Sl.No.	*Appeal No.*	*Result*
(i)	FAO-8401-2014	Dismissed
(ii)	FAO-8402-2014	Dismissed
(iii)	FAO-8430-2014	Allowed
(iv)	FAO-1271-2015	Dismissed
(v)	FAO-2340-2015	Allowed
(vi)	FAO-8470-2014	Allowed
(vii)	FAO-2780-2015	Allowed
(viii)	FAO-6726-2015	Allowed

FAO-2340-2015, FAO-8470-2014, FAO-2780-2015, FAO-6726-2015

As discussed above, the amount of compensation awarded to claimants is enhanced in all these aforesaid appeals. The enhanced amount of compensation shall be shared by the appellants-claimants in equal shares (except in FAO-2340-2015 in which, the entire enhanced amount of compensation shall be paid to the minor daughters of deceased). The liability to pay the enhanced amount of compensation shall be as per the award. The enhanced amount of compensation will carry interest @ 7% per annum from the date of filing of the appeal till actual realisation. Respondent-insurance company will deposit the shares of appellants-claimants, who are major, in their bank accounts or pay the same through demand drafts. The share of minor appellants-claimants, if any, will be deposited in some nationalised bank as fixed deposits till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of these appeals.

(SURINDER GUPTA)
JUDGE

March 23, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No