In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:16.3.2018

FAO No. 8416 of 2014(O&M)

Sushila Devi and others
---Appellants

vs.

Mahipal @ Mala and others
---Respondents

FAO No. 8492 of 2014(O&M)

Rohtash
---Appellant

vs.

Mahipal @ Mala and others
---Respondents

FAO No. 9903 of 2014(O&M)

L & T General Insurance Company Limited
---Appellant

vs.

Sushila Devi and others
---Respondents

FAO No. 10248 of 2014(O&M)

Azad Singh
---Appellant

vs.

Mahipal @ Mala and others
---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. R.K.Saini, Advocate
for the appellant(s) in FAO Nos. 8416, 8492 and 10248 of 2014

Mr. Parveen Sharma, Advocate
for respondent No. 2 in FAO Nos. 8416, 8492 and 10248
of 2014

for respondent No. 6 in FAO-9903 of 2014

Mr. Kulwinder Singh, Advocate
for the insurance company

Mr. Rajan Bhargava, Advocate for
Mr. Vishal Aggarwal, Advocate
for the appellant in FAO-9903 of 2014

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Rekha Mittal, J.

This order will dispose of FAO Nos. 8416, 8492, 9903 and 10248 of 2014 as these have emerged out of the same award dated 13.5.2014 passed by the Motor Accidents Claims Tribunal, Karnal (in short "the Tribunal") whereby compensation has been awarded on account of death of Naresh and injuries sustained by Rohtash and Azad Singh in a motor vehicular accident that took place on 7.12.2011.

FAO No. 8416 of 2014 has been filed by Sushila Devi and others for enhancement of compensation on account of death of Naresh, FAO No. 9903 of 2014 by L & T General Insurance Company to assail quantum of compensation allowed in favour of Sushila Devi and others, FAO Nos. 8492 of 2014 and 10248 of 2014 by Rohtash and Azad Singh, injured respectively seeking enhancement of compensation.

Counsel for the insurance company would inform that appeal has been preferred by the insurance company only to assail quantum of compensation qua death of Naresh.

CM No. 22824-CII of 2014 in FAO-8416 of 2014

Prayer in this application is for condoning delay of 10 days in filing the appeal.

In view of averments made in the application and arguments advanced by the counsel for the applicants, application is allowed and delay of 10 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO Nos. 8416 and 9903 of 2014

The Tribunal has awarded compensation of Rs.49,91,800/-, detailed hereunder:-

Annual income of the deceased	Rs. 2,69,800/-
Addition in income for future prospects	50%
Income tax liability	Rs.5200/-
Deduction for personal expenses	1/4th
Multiplier	16
Loss of dependency	Rs. 47,66,800/-
Loss of consortium	Rs. 1,00,000/-
Loss of love and affection for minor child	Rs. 1,00,000/-
Funeral expenses	Rs. 25,000/-

Counsel representing the insurance company would argue that the Tribunal has assessed income of the deceased on the basis of income tax return for the assessment year 2011-12 wherein gross income of Rs. 2,69,800/- per annum has been shown. It is argued that the said income was received by the deceased from the business of transport as well as agriculture. It is further argued that the truck(s) used by the deceased for running his business of transport and agriculture land owned by the deceased are available for family of the deceased, therefore, income of the deceased is to be assessed on the basis of loss of managing skills only. In addition, it is argued that the Tribunal has allowed addition in income for future prospects @ 50% but the same should be 40% in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company**

Limited vs. Pranay Sethi and others 2017 SCC 1270. Compensation awarded under conventional heads needs to be restricted to Rs. 70,000/- in the light of aforesaid judgment.

Counsel representing the claimants has supported assessment of loss of dependency on the premise that the Tribunal has rightly relied upon income tax return Ex P-2 for the assessment year 2011-12 to compute loss of dependency. He has further argued that as the deceased had regular income and was an income tax assessee, addition in income for future prospects allowed by the Tribunal needs to be affirmed.

The deceased has shown his income to the tune of Rs. 2,69,800/- per annum out of which a sum of Rs. 1,10,000/- is the income from agriculture and approximately Rs. 1,59,800/- from business of transport. Widow of the deceased has not denied that the vehicle(s) used for business of transport and agricultural land is available with family of the deceased. In the given circumstances, loss of dependency is liable to be assessed on the basis of loss of managing skills of deceased who has left behind his widow and two minor children. In the given circumstances, income of the deceased is assessed at Rs. 20,000/- per month and Rs. 2,40,000/- per annum. Claimants shall be entitled to addition in income for future prospects @ 40% in the light of **Pranay Sethi and others' case (supra)**. Deduction for personal expenses and multiplier adopted by the Tribunal are affirmed. In this manner, loss of dependency comes to Rs. 40,32,000/- (2,40,000 x 16 = 38,40,000 + 15,36,000 (40%)=53,76,000-13,44,000(1/4th).

Under conventional heads, claimants shall be entitled to following compensation in the light of judgment in

Pranay Sethi and others' case (supra), detailed hereunder :-

Loss of consortium to widow	**Rs. 40,000/-**
Expenses on funeral	**Rs. 15,000/-**
Loss of estate	**Rs. 15,000/-**

The total compensation is **Rs. 41,02,000/-.** Compensation awarded by the Tribunal is reduced to the extent of **Rs. 8,89,800/-** (49,91,800 – 41,02,000). The insurance company shall be entitled to recover the excess amount, if already paid to the claimants.

For the foregoing reasons, appeal filed by the insurance company (FAO-9903 of 2014) is partly allowed in the aforesaid terms. As a natural corollary, appeal filed by the claimants (FAO-8416 of 2014) is dismissed leaving the parties to bear their own costs.

FAO No. 8492 of 2014

With regard to injuries sustained by Rohtash, the Tribunal has awarded an amount of Rs. 38,870/-, detailed hereunder:-

Medical expenses including medicines	Rs. 19,870/-
Attendant charges	Rs. 4000/-
Special diet	Rs. 5000/-
Pain and suffering	Rs. 10,000/-

Counsel for the appellant would argue that compensation awarded by the Tribunal in respect of attendant charges, special diet and pain and suffering is on lower side and needs enhancement. No compensation has been awarded with regard to loss of income during the period of treatment and recovery.

Counsel for the insurance company has supported assessment made by the Tribunal with the plea that there is no justification for enhancement of compensation.

Dr. Vivek Ahuja from Arpana Hospital, Karnal was examined and he has proved discharge summary Ex. P11. The Tribunal in para 19 of the award has noticed that the injured was taken to General Hospital, Karnal and thereafter shifted to Virk Hospital, Karnal and Dr. Vivek Ahuja has proved his admission in Arpana Hospital, Karnal. Taking into consideration the period of treatment, interest of justice would be served if the claimant is allowed additional amount of Rs. 5,000/- towards loss of income and under the heads attendant charges, special diet, pain and suffering. The additional amount shall carry interest @ 7.5% per annum from the date of petition till realization.

Appeal stands disposed of in the aforesaid terms.

FAO-10248 of 2014

The Tribunal has awarded compensation of Rs. 62,650/- in respect of injuries sustained by Azad Singh who suffered fracture right femur for which nailing was done as deposed by Dr. Vivek Ahuja. Taking into consideration the materials on record, ends of justice would be served if the injured is allowed additional amount of Rs. 10,000/- qua loss of income, attendant charges and special diet, payable with interest at the rate of 7.5% from the date of petition till realization.

Appeal stands disposed of in the aforesaid terms.

(Rekha Mittal)
Judge

16.3.2018
paramjit

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