IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 7302 of 2015 (O&M)
Date of Decision : 18.04.2018

Pavitra @ Soni and another ....Appellants

Versus

Hanuman and others .....Respondents

2. FAO No. 4968 of 2016 (O&M)

Chhota Devi and another ....Appellants

Versus

Hanuman and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Devender Arya, Advocate
for the appellants in FAO-7302-2015 &
for respondent no. 4 in FAO-4968-2016.

Mr. Chanderhas Yadav, Advocate
for the appellants in FAO-4968-2016 and
for respondent no. 4 in FAO-7302-2015.

Mr. Neeraj Khanna, Advocate
for respondent no. 3-Insurance Company in both the appeals.

Surinder Gupta, J.

Both the above captioned appeals have been taken up together as the same have been filed by dependants of Manoj Kumar (later referred to as 'the deceased'), who died in a motor vehicle accident on 14.11.2012 with truck bearing registration no. HR-66B-3897 (later referred to as 'the offending vehicle').

2. Claim petition was filed by wife and minor son of Manoj Kumar and mother of the deceased was impleaded as proforma respondent. FAO No. 7302 of 2015 has been filed by wife and minor son of the deceased while FAO No. 4968 of 2016 has been filed by mother and minor son of the deceased against same award.

3. As common question has been raised in both the appeals seeking enhancement of compensation as awarded by the Tribunal, as such, detailed facts of the case are being skipped for the sake of brevity.

4. The Tribunal vide award dated 18.09.2014 awarded compensation of ₹6,32,000/- to claimants, which was computed as follows:-

(i)	Name of the deceased	Manoj Kumar
(ii)	Age of the deceased	26 years
(iii)	Monthly income of the deceased as assessed by the Tribunal	₹4500
(iv)	1/3rd of (iii) above deducted towards personal expenses	₹4500- ₹1500) = ₹3000 per month
(v)	Compensation calculated after applying the multiplier of 17	(₹3000X12X17) = ₹612000
(vi)	Compensation for loss of consortium	₹10000
(vii)	Compensation for funeral expenses	₹10000
Total		**₹632000**

5. Learned counsel for appellants have argued that the deceased was 26 years of age. He was working as Clerk in Yadhuvanshi Siksha Niketan, Sohali and this fact was proved by examining RW-1 Hemant Kumar, Accountant, Yadhuvanshi Siksha Niketan but the Tribunal discarded his statement on the ground that he had not brought attendance register, ESI/PF register and salary record of the deceased. The Tribunal took salary of the deceased as ₹4500/- per month, which is below the minimum wages prescribed for an unskilled worker. Being an educated person, the deceased could not be equated with an unskilled labourer. Even if evidence regarding his employment as clerk be disbelieved still salary of the deceased could be assessed equivalent to skilled worker, which was ₹5602/- per month in the year 2012. Relying on observations of Hon'ble Apex Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017 (4)***

RCR (Civil) 1009, he has claimed addition in income of the deceased towards future prospects and compensation under the conventional heads.

6. Learned counsel for respondent no. 3-Insurance Company has argued that as per claimants, the deceased was doing dairy farming and agriculture work but no evidence was produced regarding land or business activity of the deceased. The Tribunal has rightly rejected the evidence about employment of the deceased as clerk in Yadhuvanshi Siksha Niketan, Sohali and his salary as ₹15000/- per month as the witness examined by claimants could not produce any record regarding employment of deceased and his attendance register, ESI/PF register or any other salary record. The accident took place in the year 2012 and income of the deceased was rightly assessed by the Tribunal. He has, however, not disputed the grant of addition in income of the deceased towards future prospects and compensation under the conventional heads as per law settled by Hon'ble Apex Court in case of ***Pranay Sethi (supra)***.

7. Though, claimants have alleged income of the deceased as ₹15000/- per month but they could not prove the same by leading any evidence. They have examined Hemant Kumar, Accountant as RW-1, who stated that the deceased was employed as clerk in Yadhuvanshi Siksha Niketan, Sohali and was getting salary of ₹15000/- but his statement was rightly discarded by the Tribunal in the absence of any supporting document regarding employment of the deceased and keeping in view the fact that claimants have not pleaded in petition that the deceased was working as clerk in that school. In view of above fact and submission of learned counsel for appellants that monthly income of the deceased could be taken as a skilled worker, which at the relevant point of time was ₹5602/-, has merit and is

accepted. Income of the deceased is assessed as ₹5600/- per month. Claimants are also entitled to 40% addition in income of the deceased towards future prospects and compensation of ₹70000/- under the conventional heads i.e. loss of consortium, loss of estate and funeral expenses.

8. In view of my above discussion compensation, to which claimants-appellants are entitled, is computed as follows:-

(i)	Monthly income of the deceased	₹5600 per month
(ii)	40% of (i) above added towards future prospects	(₹5600+ ₹2240)= ₹7840 per month
(iii)	1/3rd of (ii) above deducted towards personal expenses	(₹7840- ₹2613) = ₹5227 per month
(iv)	Compensation calculated after applying the multiplier of 17 in view of age of the deceased	(₹5227X12X17) = ₹1066308
(v)	Compensation towards loss of consortium	₹40000
(vi)	Compensation towards loss of estate	₹15000
(vii)	Compensation towards funeral expenses	₹15000
Total		**₹1136308 (rounded off to ₹1136300)**

9. As a sequel of my discussion above, the instant appeal has merit and the same is accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of **Manoj Kumar** is enhanced from **₹6,32,000/-** to **₹11,36,300/-**. 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 instant appeal till actual realization. Claimants will share the enhanced amount of compensation as per award.

10. Respondent no. 3-Insurance Company being insurer of the offending vehicle will **deposit the share of wife and mother of the**

deceased (appellant no. 1 in both the appeals) in their bank accounts or pay the same through demand draft. The share of claimant No. 2, minor son of the deceased, will be deposited in some nationalized bank as fixed deposit till the period he attains majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and he shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in his name after the date of his attaining majority. The above direction has been issued to save claimant from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after minor claimant has attained age of majority. **Claimant no. 1-Smt. Pavitra @ Soni** being mother and natural guardian of minor claimant shall be entitled to get interest on the share of minor deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of his brought up.

11. In the event of demise of any of the claimants before or after disposal of this appeal, compensation of his/her share shall be paid to surviving claimants.

April 18, 2018 **(SURINDER GUPTA)**
jk **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*